

No. 12706

United States
Court of Appeals
for the Ninth Circuit.

JOSHUA HENDY CORPORATION, a Corpora-
tion, Sued Herein as Pacific Tankers, Inc., a
Corporation,

Appellant,

vs.

OTTO GEORGE CLAVEL,

Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division.

FILED

MAY 17 1951

PAUL P. O'BRIEN

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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JOHN H. BLACK,

EDWARD R. KAY,

233 Sansome Street,
San Francisco California,

Proctors for Respondent and Appellant.

L. CHARLES GAY,

311 California Street,
San Francisco, California,

Proctor for Libelant and Appellee.

In the United States District Court, in and for
the Northern District of California, Southern
Division

In Admiralty, No. 25319-G

OTTO GEORGE CLAVEL,

Libelant,

vs.

PACIFIC TANKERS, INC., a Corporation,
UNITED STATES OF AMERICA, and Black
Company,

Respondents.

LIBEL BY SEAMAN FOR DAMAGES
FOR INJURIES

Filed Under Provisions of 28 U. S. C., Sec. 837.

To the Honorable, the Judges of the United States
District Court for the Northern District of
California, Southern Division:

The libel of Otto George Clavel, in a cause of tort
for damages for personal injuries, civil and mari-
time, alleges:

I.

That the true name of the respondent sued herein
under the fictitious name "Black Company" is now
unknown to libelant, and libelant prays that when
its true name has been ascertained the same may
be inserted herein by appropriate amendment.

II.

That respondent Pacific Tankers, Inc., is a cor-

poration having its principal office and place of business in the City and County of San Francisco, State of California.

III.

That libelant is a resident of the County of Marin, within the Northern District of California.

IV.

That at all times mentioned herein respondents were the owners of the American Tanker "Pecos," and that at all of said times the said vessel was being operated for the United States of America by respondents Pacific Tankers, Inc., and Black Company, as a public vessel of the United States of America.

That the said vessel is now, or during the pendency of this action will be, within the territorial jurisdiction of the United States and of this Honorable Court.

V.

That at all times mentioned herein libelant was employed by the respondents as a member of the crew, to wit, boatswain, of the said tanker "Pecos." That on or about April 22, 1948, in the course of his employment on the vessel, libelant suffered an injury when he scratched the index finger of his right hand. That he cleaned the cut or scratch, but two days later the finger began to swell and became very painful. That libelant reported the injury to the mate, who gave him epsom salts for treating the finger, but it failed to respond to treatment and continued to swell and became discolored. That the

mate of the vessel thereupon undertook to treat libelant's injured finger, and in the course of treating same made a deep incision in the finger. That the master of the ship also gave the finger treatment, and squeezed it in an attempt to discharge pus. That the treatment by the mate and the master was not beneficial, but on the contrary made the injury worse. That libelant required and expressly requested the master and mate to provide him with adequate skilled medical treatment, but none was provided until the vessel arrived at Yokosuka, Japan. That by that time the finger was in such condition that treatment was unavailing to save it.

That libelant returned to the United States on the vessel, and was discharged at Los Angeles on May 24, 1948, and that he came to San Francisco for further treatment.

That it has been necessary to amputate libelant's index finger at the second joint, that the remaining portion of the finger is still sensitive, and that the movement of the second and third fingers of his right hand has been impaired. On information and belief, alleges that said injuries are permanent in nature.

VI.

That the said injuries proximately resulted from the negligence and carelessness of respondents and their officers and employees in failing to provide libelant with proper treatment and medication, and from the negligence of the respondents' officers in the treatment of libelant's injuries, as aforesaid.

VII.

That by reason of the premises libelant has suffered damages through loss of earnings in the amount of \$2,000.00, to date, and has been generally damaged in the sum of \$20,000.00.

VIII.

That this action is brought under the provisions of Title 46, United States Code, sec. 781, known as the Public Vessels Act, and related sections, and Title 46, U. S. Code, sec. 688, known as the Jones Act.

IX.

That all and singular the premises are true, and within the admiralty jurisdiction of the United States, and of this Honorable Court.

Wherefore, libelant prays that respondents may be required to appear and answer all and singular the matters aforesaid, and that libelant may have a decree for the amount of his damages, with costs, and that libelant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

/s/ L. CHAS. GAY,

Proctor for Libelant.

State of California,

City and County of San Francisco—ss.

L. Chas. Gay, being first duly sworn, deposes and says: that he is proctor for the libelant in the foregoing action; that said libelant is now outside the

City and County of San Francisco, where affiant maintains his office, and that affiant makes this verification on behalf of libelant, upon information received from libelant; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein alleged on information and belief, and as to such matters he believes it to be true.

/s/ L. CHAS. GAY.

Subscribed and sworn to before me this 19th day of November, 1948.

[Seal] /s/ LAURA L. MacHUGH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires January 15, 1952.

[Endorsed]: Filed November 24, 1948.

[Title of District Court and Cause.]

ANSWER TO LIBEL

Comes now Pacific Tankers, Inc., a corporation,
and answering the Libel herein, alleges:

I.

The allegations of Article I require no answer.

II.

Admits the allegations of Article II.

III.

Respondent has no information or belief concern-

ing the allegations of Article III, and demands strict proof thereof.

IV.

Answering the allegations of Article IV respondent alleges that the United States of America is the owner of the USNT "Pecos" and that said vessel was operated, managed and controlled pursuant to the provisions of a written contract between respondent, Pacific Tankers, Inc., and the United States Navy, and not otherwise, and with these exceptions respondent denies the allegations of Article IV.

V.

Answering the allegations of Article V, respondent alleges that libelant was employed as a Bosun on the USNT "Pecos," and further alleges that on or about April 24, 1948, said libelant sustained a laceration to the fourth finger of his right hand while employed in his duties on said vessel, and save and except as hereinabove alleged and admitted denies the allegations of Article V.

VI.

Denies each and every, all and singular, all of the allegations contained in Article VI.

VII.

Denies each and every, all and singular, all of the allegations contained in Article VII.

VIII.

Answering the allegations contained in Article VIII respondent leaves all questions of jurisdiction

to the above entitled Court and denies that said action is brought within the provisions of the Public Vessels Act.

IX.

Answering the allegations of Article IX, respondent leaves open all questions of jurisdiction to the above entitled Court.

As and for a Second, Separate and Distinct Answer and Defense to Said Libel, respondent alleges that said libelant was guilty of carelessness and negligence in and about the matters and things set forth in said libel, in this, to wit: That at the time and place of the event mentioned in this libel, said plaintiff failed to use due care or caution for his own safety and protection, in that said libelant failed to report his said injury within a reasonable time to allow the proper persons aboard the said USNT "Pecos" to administer aid to him, so that any and all of the injuries or damages claimed to have been sustained by said libelant were solely and proximately caused and contributed to by his own carelessness and negligence in the premises.

Wherefore, respondent, Pacific Tankers, Inc., prays that libelant take nothing by his said libel and that respondent have its costs of suit herein incurred.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

Proctors for Respondent, Pacific Tankers, Inc., a Corporation.

State of California,
City and County of San Francisco—ss.

H. E. Hedrick, being first duly sworn, deposes and says:

That he is an officer of Pacific Tankers, Inc., a corporation; to wit, Asst. Secretary-Treasurer; that as such officer he is empowered to make this verification; that he has read the foregoing Answer to Libel and knows the contents thereof and that the same is true and correct of his own knowledge, except as to those matters therein stated on information and belief, and as to those he believes it to be true.

/s/ H. E. HEDRICK.

Subscribed and sworn to before me this 10th day of January, 1949.

[Seal] /s/ LAURA L. MacHUGH,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires January 15, 1952.

[Endorsed]: Filed January 17, 1949.

[Title of District Court and Cause.]

ANSWER OF UNITED STATES OF AMERICA

Comes now respondent, United States of America, and answering the libel herein, alleges:

I.

The allegations contained in Article I require no answer.

II.

Admits the allegations of Article II.

III.

Respondent has no information or belief concerning the allegations of Article III and demands strict proof thereof.

IV.

Answering the allegations of Article IV, respondent alleges that the Tankship Pecos was owned by the United States of America and that said vessel was operated and managed pursuant and according to the terms and conditions of a certain written contract entered into between the United States Navy and respondent, Pacific Tankers, Inc., and not otherwise, and save and except as herein admitted and alleged, denies the allegations of Article IV.

V.

Denies the allegations contained in Article V.

VI.

Denies the allegations contained in Article VI.

VII.

Denies the allegations contained in Article VII.

VIII.

Answering the allegations of Article VIII, respondent leaves open all questions of jurisdiction to the above entitled court.

IX.

Answering the allegations of Article IX respondent leaves open all questions of jurisdiction to the above entitled court.

As and for a Second, Separate, Distinct Answer and Defense to Said Libel, this respondent is informed and believes and therefore alleges upon information and belief that said libelant was guilty of carelessness and negligence in and about matters and things set forth in said libel in this, to wit: that at the time and place of the event mentioned in said libel, said libelant failed to use due or any care or caution for his own safety or protection in that said libelant failed to report his said injury within a reasonable time after the occurrence of the same in order to allow the proper persons aboard the Tankship Pecos to administer aid to him so that any and all injuries or damages claimed to have been sustained by said libelant were solely and proximately caused and contributed to by his own carelessness and negligence in the premises.

Wherefore, respondent, United States of America,

prays that said libel herein be dismissed together with costs of suit.

FRANK J. HENNESSY,
United States Attorney.

By /s/ C. ELMER COLLETT,
Assistant United States
Attorney.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,
Proctors of Counsel for United
States of America.

[Endorsed]: Filed February 8, 1949.

District Court of the United States, Northern
District of California, Northern Division

As a Stated Term of the District Court of the
United States for the Northern District of California,
Northern Division, held at the Court Room
thereof, in the City of Sacramento, on Monday, the
24th day of April, in the year of our Lord one thousand
nine hundred and fifty.

No. 25319

OTTO GEORGE CLAVEL

vs.

PACIFIC TANKERS, INC., UNITED STATES
OF AMERICA, et al.

Present: The Honorable Dal M. Lemmon,
District Judge.

ORDER ENTERING DECREE FOR \$7,000.00
IN FAVOR OF LIBELANT

This case having been heretofore tried and submitted on briefs, It Is Ordered that a decree be entered in favor of the libelant for the sum of Seven Thousand Dollars (\$7,000.00), findings of fact and conclusions of law to be submitted in accordance with the Rules of Practice of this Court.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on regularly to be heard before the Court in Admiralty on March 22, 1950. Libelant was present in person and represented by his proctor, L. Charles Gay, Esq., and the respondents were represented by their proctors, John H. Black and Edward R. Kay, by Henry W. Schaldach, Esq.; it having been stipulated by the parties in open court that the operator of the vessel involved in the action was Pacific Tankers Division of Joshua Hendy Corp. and that United States of America was not the employer of the libelant, and the action having been by stipulation dismissed as to the United States of America. Thereupon oral and documentary evidence was submitted by and on behalf of the parties to the cause and at the conclusion of all of the testimony the parties rested and the cause was submitted to the Court for its consideration and decision, and the Court having fully considered all of the evidence introduced and the briefs filed on behalf of the respective parties and being fully advised in the premises, now makes and orders entered and filed these its Findings of Fact and Conclusions of Law as follows:

FINDINGS OF FACT

I.

That on April 23, 1948, respondent Pacific Tankers Division of Joshua Hendy Corp. was the oper-

ator of the American Tanker "Pecos," and that on said day, and thereafter, libelant was employed by said respondent as a member of the crew, to wit boatswain, of said vessel.

II.

That on or about April 23, 1948, libelant, in the course of his employment on the vessel, suffered an injury when he scratched the index finger of his right hand. That libelant cleaned the wound and applied band-aids thereto. That on the second day after the injury the injured finger was swollen and painful and showed evidence of infection. That libelant reported his injury to the Mate of the vessel and stated that he was unable to work, and the Mate permitted him to knock off work, instructing him to come for medical care if the finger did not improve. That on April 25, 1948, the finger was swollen and painful and the swelling extended into libelant's right hand, and that the swelling became more pronounced and eventually extended into the right arm. That the swollen hand became discolored turning blue, green and yellow. That libelant suffered pain from the injury, and had a fever. That on April 25, 1948, libelant reported to the Master of the vessel for medical care. That libelant asked to be given penicillin, and the Master replied that he had none; libelant asked to be put ashore for hospitalization at Manila, and the Captain replied that he could not, or would not do so; that libelant then requested the Captain to radio for medical advice, and the Captain replied that that was un-

necessary. That libelant remained on the vessel until its arrival at Yokosuka, Japan, on May 3, 1948. That he was taken to a hospital in Yokosuka on May 4, 1948. That at said time the finger was still infected and the hand swollen. That libelant received penicillin and sulfa at the hospital, but the finger had then developed a "crook" and the attending physician informed libelant that it would be necessary to remove the entire finger. That libelant declined to submit to the amputation, and with the consent and approval of the doctor rejoined the "Pecos" and returned to the United States. That libelant was paid off the ship on or about May 24, 1948, and took a plane to San Francisco, and entered the Marine Hospital the following day. That at the Marine Hospital libelant was given a course of penicillin treatments, and on or about August 15, 1948, his index finger was amputated at the second joint. That thereafter the stub of the finger remained sensitive to pressure, and libelant suffers pain, particularly in cold weather. That because of the degree of infection and the interstitial scar and fibrosis secondary to the infection libelant has a stiffness and limitation of the right middle finger. That his grip in his right hand is reduced approximately 35%. That libelant was disabled from work by reason of the injuries until about February 1, 1949. That he then returned to work and performed his regular duties until December, 1949, when he was compelled to stop work by reason of the pain in his hand induced by cold weather. That he had

not resumed work on the day of the trial on March 22, 1950.

III.

That on April 25, 1948, when libelant reported for treatment it was apparent that his finger and hand were infected, and that the condition became worse. That the Mate of the vessel treated the injury by furnishing Epsom Salts and causing libelant to soak the hand in hot Epsom Salts solution, and that when the swelling progressed the Mate applied a "drawing salve" to the finger. That on April 27, 1948, the Mate made an incision in libelant's index finger for the purpose of removing pus therefrom, and thereafter removed water and pus from the back of libelant's hand. That the recognized and customary treatment for the condition was a course of penicillin and/or sulfa treatments. That had libelant received the said usual and necessary treatment the infection could have been controlled and eliminated without any permanent ill effects. That libelant's injury and need for treatment were obvious, and the proper treatment thereof was known to the officers of the vessel.

IV.

That respondent negligently failed to provide the vessel with an adequate medicine chest, and negligently failed to provide the vessel with a reasonably sufficient supply of penicillin and sulfa drugs. That the respondent negligently failed to replenish the medicine chest at ports of call, or by contacting other vessels. That the vessel was traversing a busy trade

route and could and should have contacted other vessels in the vicinity. That respondent negligently failed to administer the appropriate medicines, to wit, penicillin and sulfa drugs, if in fact there were any on board the ship. That respondent negligently failed to avail itself of medical advice available by means of a radio service for the purpose. That on April 27, 1948, when libelant's condition was serious, and when his hand was lanced by the Mate, the vessel was less than a day's run from Manila, and that respondent negligently failed to put in at Manila, and negligently failed to hospitalize libelant as requested. That libelant's condition was the proximate result of improper and inadequate medical care, as aforesaid.

V.

That at the time of his injury libelant was earning approximately \$400 per month. That he was disabled for the period stated above, and suffered physical and mental pain. That he has permanent injuries as above stated which handicap him in his occupation, and is entitled to compensation therefor, as well as for cosmetic considerations. That the issue of maintenance was not submitted to the court, either by pleadings or evidence, and the issue was reserved. That plaintiff has been damaged in the amount of \$7,000.

VI.

That libelant was not contributorily negligent in respect of care of his injured hand, but on the contrary demanded adequate treatment and cared for

his injury as well as possible under the circumstances under which he found himself.

From the foregoing facts the Court draws the following

Conclusions of Law

I.

That the Court has jurisdiction hereof.

II.

That respondent negligently failed to provide libelant with usual and adequate medical care following his injury suffered in the course of respondent's employment, and that by reason thereof libelant suffered damages in the amount of \$7,000.

III.

That a decree should be entered herein in favor of the libelant, Otto George Clavel, and against respondent Pacific Tankers Division of Joshua Hendy Corp. in the amount of \$7,000, with costs of suit.

Let decree be entered accordingly.

Done and dated at Sacramento, California, this 22nd day of June, 1950.

/s/ DAL M. LEMMON,

Judge of the United States
District Court.

Receipt of copy acknowledged.

Lodged May 2, 1950.

[Endorsed]: Filed June 22, 1950.

In the United States District Court, Northern
District of California, Southern Division

No. 25319—In Admiralty

OTTO GEORGE CLAVEL,

Libelant,

vs.

PACIFIC TANKERS DIVISION OF JOSHUA
HENDY CORP., a Corporation,

Respondent.

FINAL DECREE

This cause having come on to be heard in its regular order on March 22, 1950, upon pleadings and proofs, and having been briefed and submitted by proctors for the respective parties, and the Court, after due deliberation, having on April 24, 1950, ordered decree in favor of libelant in the amount of \$7,000.00, and having filed its Findings of Fact and Conclusions of Law, and ordered that a decree be entered accordingly, it is hereby

Ordered, Adjudged and Decreed, that the libelant recover of and from the respondent Pacific Tankers Division of Joshua Hendy Corp. the sum of \$7,000.00, together with libelant's costs taxed in the sum of \$....., with interest on said sums until paid, and that the libelant have execution against respondent and its stipulators therefor.

Dated: June 22nd, 1950.

/s/ DAL M. LEMMON,

Judge of the District Court.

Receipt of copy acknowledged.

Lodged May 2, 1950.

Entered June 23, 1950.

[Endorsed]: Filed June 22, 1950.

[Title of District Court and Cause.]

PROPOSED COUNTER FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Comes now the respondent herein and proposes the following Counter Findings to the Proposed Findings of Fact and Conclusions of Law heretofore submitted by libelant.

As to the Findings of Fact:

I.

That Paragraph II of the Proposed Findings of Fact be amended beginning with the word "That" on line 22 of page 2 thereof, to and including the end of said Paragraph II, as follows:

That the Master and Medical Officer aboard, rendered libelant the customary and recognized treatment for an infected finger by soaking said libelant's finger in Epsom Salt solution, and that it was not necessary to radio for medical advice because there was no other treatment available aboard said vessel

that could have been given to said libelant. That the libelant did not request the Captain or First Mate of the said vessel to radio for medical advice, nor did the libelant request that he be put ashore during any of the period of time between the Straits of Singapore and the coast of Japan while the vessel was en route to Japan. That there was no penicillin or sulfa in the said medicine chest due to the fact that members of the crew had been receiving penicillin and sulfa treatments for venereal diseases which the medical officers were treating, and that said supplies were exhausted at the time that libelant's finger became infected. That on May 3, 1948, the libelant was taken to the Naval Hospital at Yokosuka, Japan, where he was given penicillin treatment and that thereafter requested that he be allowed to return to the vessel to complete the voyage, which he did. That the index finger of libelant was amputated at the second joint on or about August 15, 1948, and he has a reduction of grip of approximately 35%. That libelant returned to work on or about February, 1949, and worked for an entire year and his index finger at the present time is not such that he cannot work because of the condition he complains of.

II.

That Paragraph III of the Findings of Fact be amended to read as follows:

That on or about April 25, 1948, when libelant reported to the First Mate that he had an infection, he was given the recognized treatment for infections

by the Mate who furnished Epsom Salts and hot water and that thereafter the finger was incised and pus removed therefrom. That libelant thereafter continued the recognized treatment for infections, that is, the soaking of his finger and hand in hot Epsom Salt solution. That there was no penicillin or sulfa aboard the vessel at the time that libelant's finger became infected due to the fact that the supplies had been depleted by use by the Medical Officer for treatment of venereal diseases aboard said vessel.

III.

That Paragraph IV of the Findings of Fact be amended as follows:

That the respondent was not negligent in failing to provide penicillin and sulfa drugs, and the fact that the supply of penicillin and sulfa was exhausted does not constitute negligence on the part of respondent. That the officers aboard said vessel afforded libelant the recognized and proper treatment for infections during the time that his finger was infected aboard said vessel and that even if the Master had radioed for medical advice, such advice would not have been other than what the said officers were then tendering said libelant. That the condition of libelant's finger was not the result of improper and inadequate medical care.

IV.

That Paragraph V of the Findings of Fact be amended as follows:

That said libelant was earning approximately

\$250.00 per month base pay and \$150.00 a month overtime and that libelant has not been damaged in the sum of \$7,000.00 or in any other sum or sums, or otherwise, or at all.

V.

That Paragraph VI of the Findings of Fact be amended as follows:

That said libelant was tendered and given the recognized medical treatment for an infected finger while aboard said vessel.

As to the Conclusions of Law:

I.

That Paragraph II of the Conclusions of Law be amended as follows:

That respondent gave and tendered libelant with the usual and recognized medical treatment for an infected finger while aboard said vessel and that such treatment was the recognized treatment for infections of the nature that libelant was suffering from while aboard the "Pecos" and that libelant has not been damaged in any other sum or sums, or otherwise, or at all.

II.

That Paragraph III of the Conclusions of Law should be amended as follows:

That Decree be entered in favor of respondent

and against libelant in that libelant take nothing by his said libel and that the said libel be dismissed.

Dated: May 3, 1950.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

Proctors for Pacific
Tankers, Inc.

[Endorsed]: Filed June 23, 1950.

[Title of District Court and Cause.]

STIPULATION FOR
AMENDMENT OF DECREE

It is stipulated by and between the parties hereto, through their respective proctors, that the Final Decree heretofore entered herein shall be deemed amended in the following respects: Wherever the words "Pacific Tankers Division of Joshua Hendy Corporation" or "Pacific Tankers, Inc.," appear, either in the pleadings or in the title or body of said final decree, the words Joshua Hendy Corporation shall be substituted therefor, and upon filing of this stipulation the decree shall be deemed amended accordingly.

Dated: July 21st, 1950.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

Proctors for Respondent.

/s/ L. CHAS. GAY,
Proctor for Libelant.

It is so ordered July 21st, 1950.

/s/ DAL M. LEMMON,
Judge of the District Court.

[Endorsed]: Filed July 21, 1950.

[Title of District Court and Cause.]

PETITION FOR APPEAL AND ALLOWANCE
THEREOF

Comes now the respondent herein, Joshua Hendy Corporation, a corporation, heretofore sued as Pacific Tankers, Inc., and being aggrieved by the Final Decree made and entered herein on the 23rd day of June, 1950, by the above-entitled Court, does hereby claim an appeal from said Final Decree and from said Order to the United States Court of Appeals for the Ninth Circuit, and prays that their said appeal may be allowed.

Respondent further prays leave to prosecute this appeal by furnishing a good and sufficient supersedeas bond to secure payment of all damages, costs and fees, said supersedeas bond to be in the amount of \$9,000.00.

Dated: July 21, 1950.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

Proctors for Respondent and
Appellant.

Order Allowing Appeal

The within appeal is allowed and the supersedeas bond is hereby approved.

Done in open Court this 20th day of July, 1950

/s/ LOUIS GOODMAN,

Judge of the United States
District Court.

[Endorsed]: Filed July 21, 1950.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To Otto George Clavel, Libellant Herein, and to
L. Chas. Gay, His Proctor:

Notice Is Hereby Given that Joshua Hendy Corporation, a corporation, sued herein as Pacific Tankers, Inc., the respondent above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Order made and entered by the above-entitled Court on April 24, 1950, and from the Final Decree made and entered by this Court on June 23, 1950.

Dated: July 21, 1950.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

Proctors for Respondent and
Appellant.

[Endorsed]: Filed July 21, 1950.

[Title of District Court and Cause.]

APOSTLES ON APPEAL AND PRAECIPE
THEREFOR

To L. Chas. Gay, Esq., Proctor for Libelant and
Appellee, Otto George Clavel:

To Carl W. Calbreath, Clerk of the United States
District Court of the Northern District of Cali-
fornia, Southern Division:

Libelant hereby designates and requests that the
record on appeal in the above-entitled action shall
include:

1. Seaman's libel in personam;
2. Answer of respondent Pacific Tankers, Inc., a
corporation;
3. Answer of respondent United States of
America;
4. Findings of fact and conclusions of law pro-
posed by libelant and signed and filed on the records
of the Court on June 23, 1950;
5. Findings of fact and conclusions of law pro-
posed by respondent Pacific Tankers, Inc.;
6. Final Decree signed and filed on the records
of the Court on June 23, 1950;
7. Petition for an Order allowing appeal;
8. Citation on Appeal;
9. Assignments of Error;
10. Transcript of all oral testimony adduced
at the trial of said cause;

11. All of the documents, records, papers and exhibits admitted in evidence at the trial of said cause;

12. All depositions introduced in evidence;

13. Stipulation of counsel to designate Joshua Hendy Corporation as proper party respondent and appellant;

14. Notice of Appeal;

15. This designation of Apostles on Appeal and Praeceptum Therefor.

Dated: June 21, 1950.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

Proctors for Respondent and
Appellant.

[Endorsed]: Filed July 21, 1950.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the appellant herein may have to and including October 9, 1950, to file the Record on Appeal in the United States Court of Appeals in and for the Ninth Circuit.

Dated: August 29, 1950.

/s/ LOUIS GOODMAN,

United States District Judge

[Endorsed]: Filed August 29, 1950.

[Title of District Court and Cause.]

CITATION ON APPEAL

To Otto George Clavel, Libelant Herein, and to
L. Chas. Gay, His Proctor:

Whereas, Joshua Hendy Corporation, a corporation, sued as Pacific Tankers, Inc., has lately appealed to the United States Court of Appeals for the Ninth Circuit from the decree which was entered in the above-entitled Court on June 23, 1950, and from the order which was entered in said Court on April 24, 1950:

You are, therefore, hereby cited to appear before the said United States Court of Appeals for the Ninth Circuit, to be held in the City and County of San Francisco, State of California, at the next term of said Court, 40 days after the date of this citation to do and give what may appertain to justice to be done in the premises.

Given Under My Hand in the City and County of San Francisco, State of California, in the Ninth Circuit on the 20th day of July, 1950.

/s/ LOUIS GOODMAN,

Judge of the United States
District Court.

[Endorsed]: Filed July 21, 1950.

In the District Court of the United States, for the
Northern District of California, Southern Division

No. 25319-G-L

OTTO G. CLAVEL,

Libelant,

vs.

PACIFIC TANKERS, INC., a Corporation, and
UNITED STATES OF AMERICA, et al.,
Respondents.

Before: Hon. Dal M. Lemmon, Judge.

REPORTER'S TRANSCRIPT

Wednesday, March 22, 1950

Appearances:

For the Libelant:

L. C. GAY, Esq.,

311 California Street,
San Francisco, Calif.

For the Respondents:

HENRY W. SCHALDACH, Esq.,

233 Sansome Street,
San Francisco, California.

(Mr. Gay and Mr. Schaldach made opening
statements.)

Mr. Gay: If your Honor please, there have been,
I think, four depositions taken in this case—two

depositions of Captain Johnson, one deposition of the Mate, Mr. Coward—these were taken by the Respondents—and a deposition taken by the Libelant of Mr. Littlewood. I think at this time I will offer those depositions in evidence.

The Court: Very well.

Mr. Schaldach: And the exhibits with them, Mr. Gay?

Mr. Gay: And the exhibits. And at this time—it may be out of order, your Honor, but I would like to put the chart on the blackboard. I think it will be helpful to your Honor.

(The depositions of Captain Johnson were marked as Libelant's Exhibits 1-A and 1-B; the deposition of George William Littlewood, Jr., was marked Libelant's Exhibit 1-C; and the deposition of Louis P. R. Coward was marked Libelant's Exhibit 1-D.)

(Mr. Gay placed a chart upon the blackboard.)

Mr. Gay: Now, if your Honor please, this chart shows—this area with numbers is the ocean, showing depths and so on, and this is China, this is Luzon, and the other Philippine Islands and this line along here was charted by the Captain from the log book and shows the course of the vessel and where it was on different days. [2*]

In other words, here it was on April 24th, here on April 25, 26, 27, 28, 29, 30th, and so on, up to Yokosuka.

The Clerk: That is part of which deposition?

*Page numbering appearing at top of page of original Certified Transcript of Record.

Mr. Gay: It is part of the second deposition of Captain Johnson.

Will you take the stand, please?

OTTO G. CLAVEL

the Libelant, sworn.

Direct Examination

Q. (By the Clerk): Your name is Otto G. Clavel, is that correct? A. Yes.

Mr. Gay: Mr. Schaldach, as I understand it, the Pacific Tankers was the employer in this instance; is that correct?

Mr. Schaldach: That is correct. Will you stipulate, Mr. Gay, that the United States of America may be dismissed at this time?

Mr. Gay: Yes. Upon the stipulation of counsel of the Pacific Tankers, Inc., and the present name of Pacific Tankers, Inc., is Pacific Tankers, Division of Joshua Hendy; is it not?

Mr. Schaldach: Joshua Hendy Corporation.

Mr. Gay: Corporation.

Mr. Schaldach: I believe the answer sets forth that he is employed by the Pacific Tankers, Division of Joshua Hendy [3] Corporation, on the Picos at the time of this accident.

Mr. Gay: Upon the stipulation of counsel, the Pacific Tankers——

The Court: You accept the stipulation?

Mr. Gay: Yes.

The Court: Therefore dismiss the United States of America?

Mr. Gay: Right.

(Testimony of Otto G. Clavel.)

Q. Mr. Clavel, you are the libelant in this action?

A. Yes.

Q. And what is your occupation?

A. Seaman.

Q. How long have you been going to sea?

A. Forty-seven years.

Q. What is your age? A. Sixty-one.

Q. In what capacities have you gone to sea?

A. As Able Bodied Seaman, Quartermaster, and Boatswain.

Q. And you were employed on the Picos as Boatswain at the time of the matters complained of? A. Yes, sir.

Q. The vessel sailed from where?

A. The vessel sailed from San Francisco, Oakland, to Honolulu; from Honolulu to Yokosuka, and from Yokosuka it made a shuttle trip to the Persian Gulf and then came back to [4] Yokosuka.

Q. And then returned to the United States?

A. And then returned to the United States.

Q. Paid off in San Pedro? A. Yes, sir.

Q. You suffered an injury to your hand, right hand, on that trip, did you? A. Yes, I did.

Q. And how did the injury start?

A. Well, I had to make an awning for the poop deck, so the Mate asked me to make it fast, because the fellows had to steer on the poop deck and the steering gear was broken down, and I made myself two hooks, there was none on there, so I made them out of nails, I filed them out of nails, and while filing this one I scratched my finger a bit and then

(Testimony of Otto G. Clavel.)

I must have got some of that Persian dye from the canvas, because it was Navy canvas.

Q. You made hooks out of nails, is that correct?

A. Yes.

Q. You had the nails in a vice?

A. In a vice.

Q. And were filing them or bending them?

A. Yes, filing them.

Q. And you scratched your right index finger?

A. Just a little bit. [5]

Q. How much of a scratch was that?

A. It was a very little scratch, hardly noticeable, and I went back aft and washed it out and put a bandage on it.

Q. What day of the week was that?

A. Friday.

Q. And what day of the month?

A. The 23rd.

Q. 23rd of April, wasn't it?

A. Of April, yes.

Q. 1948? A. 1948.

Q. And the libel alleges that it happened on April 22, and have you since checked the calendar to see what day of the week Friday—what date Friday was? A. Yes, sir.

Q. And you asked to correct your allegation from April 22 to April 23, 1948?

(The witness nods his head in an affirmative manner.)

Q. Now, how was the finger the rest of the day and that night? Did it give you any trouble?

(Testimony of Otto G. Clavel.)

A. The first day it gave me trouble, starting in giving me trouble. When I ate I couldn't eat any more, I was sort of nauseated. The next day the finger started to swell up. It was Saturday and I couldn't work, and I knocked off work. The Mate asked me to do some work in the afternoon, what [6] is really my time off, but I couldn't do the work, and I told him I couldn't work with this finger, it was impossible.

Q. Was that overtime work you were asked to do?

A. Yes, it was Saturday afternoon. That is the reason I remember it so very well.

Q. So that was your option to not work if you didn't wish to? A. Yes.

Q. And you stated you told the Mate you couldn't work on account of your finger? A. Yes.

Q. How did the finger develop after that?

A. Well, the finger swoll up to twice its size and the hand started to discolor. So the next day I reported it to the Captain, and——

Q. That is to Captain Johnson?

A. To Captain Johnson. Well, Captain Johnson took me down and looked at the finger and started to squeeze, because it had a yellow core on it, and I told him to keep his hands off, better wash his hands before he squeezed it on that finger, and from then on the Captain never touched anything, and he cut that finger——

Q. All right, that is the only treatment that the Captain gave you? A. Yes.

(Testimony of Otto G. Clavel.)

Q. Now we are speaking of Sunday, which would be the 25th [7] of April? A. Yes.

Q. Did you see the Mate after that?

A. Yes, then I saw the Mate, and the Mate told me to soak my hand in Epsom Salts.

Q. Did he give you Epsom Salts?

A. He gave me Epsom Salts and I soaked it every two hours.

Q. Now, how was the finger on Monday, which would be Monday, the 26th of April?

A. Monday the hand was discolored and the arm started to swell up, and that is when I asked the Captain to do something for this hand, either—told him to call up a shore station for a hospital to radio for medical advice.

Q. Will you turn towards his Honor? I think he is having difficulty.

The Court: Go ahead.

A. —or send me ashore, if possible, somewhere.

Q. Did you say anything to him about any other treatment, drugs?

A. Well, I asked him for penicillin. He said there isn't any more aboard.

Q. When you stated you asked the Captain to call up, I believe you said, what did you mean by that?

A. I mean to radio, to call up a hospital and ask for medical advice, how to cut and how to treat this finger, what [8] is done mostly on ships in cases like this.

(Testimony of Otto G. Clavel.)

Q. And what did the Captain say to that?

A. The Captain said, "That is not necessary, the Mate will take care of this."

Q. And you stated also that you said something to the Captain about being taken to a hospital?

A. Yes.

Q. What did you say to him and what did he reply?

A. Well, I asked him if it was possible to go to the nearest port, which would have been in this case Manila, and he said, "That is not necessary, it will be a couple of more days, four, five or six days we are in Yokosuka, and then you can go to the Navy Hospital."

Q. All right. Now, on Tuesday, the 27th, that is the following day, what was the condition of your hand on that day?

A. Well, the finger was swollen up to twice its size. The hand was altogether swollen and the whole arm was swollen. That is when the Mate decided to cut the finger.

Q. And was it on the 27th of April, 1948—did he make a cut on that day?

A. He made a cut on that day, yes.

Q. Tell his Honor then what was done.

A. Well, the Mate cut the finger just above this right here (indicating). He cut, then he squeezed the pus out, quite a bit of pus out, and then he bandaged the finger again [9] and let me go, and on my way back I ran into the Captain on the poop deck and I said, "Captain, I don't feel good

(Testimony of Otto G. Clavel.)

about this cutting on my finger, there is only one right hand I have got. How about getting close to Manila and asking for advice, or sending me ashore?"

He said, "Well, it is cut all right, that is all that is necessary."

Q. Now, did you continue on the vessel until it reached Yokosuka? A. Yes.

Q. The log book of the vessel shows that the vessel reached Yokosuka on May 3rd, your Honor. Tell us about the condition of your finger from the time it was cut on April 27th, 1948, until the vessel reached Yokosuka.

A. Well, after the Mate cut the finger, the upper part of my finger started to heal up, because he put some healing powder on it, and the finger started to get worse here (indicating), and started to get very badly infected here (indicating). This finger was all swollen up, and the whole hand was pussy, so the Mate had to let that pus out and the arm was still swollen. Well, he put some salve on here (indicating), and that got rid of this, but by the time I got to Yokosuka—we came in in the afternoon, and I asked the Captain to be sent ashore. He said, "We haven't got any passes." [10]

I said, "Captain, after all, I don't think I want to go ashore to amuse myself, I would like to see a doctor, because this hand bothers me very much and worries me very much."

"Well," he said, "wait until next day."

(Testimony of Otto G. Clavel.)

And the next day he brought me with other patients to the hospital.

Q. Now, with reference to your right index finger, prior to the time it was cut, was it straight?

A. No, it started to crook more and more, so by the time we arrived in Yokosuka the finger was at a right angle so it couldn't move any more.

Q. Was it stiff? A. It was stiff, yes.

Q. It was bent like that at a right angle?

A. Right angle.

Q. So it is your statement you were taken to the hospital in Yokosuka on May 4th, assuming the vessel arrived on May 3rd? A. Yes.

Q. What treatment did you receive there?

A. Well, they gave me right away penicillin treatment, and the doctors, so as to make it stronger, they gave me sulfa treatment at the same time.

Q. How often were you given penicillin?

A. Eight times in twenty-four hours.

Q. And for how many days were you given that?

A. I was there for three and a half days, and then I was sent back to the vessel.

Q. Now, did the doctor there say anything to you about operating on the finger, or anything of that sort?

A. Well, I asked the doctor, because this part was very badly swollen (indicating)——

Mr. Schaldach: Just a moment. Your Honor, I will object to any conversation between the Naval Doctor and this man there.

The Court: Sustained.

(Testimony of Otto G. Clavel.)

Mr. Gay: If your Honor please, I would like to ask the question and limit the purpose of it—Mr. Clavel is charged generally with contributory negligence, and I offer this testimony solely to show he was acting in accordance with the doctor's instructions in coming back.

The Court: Well, it would be hearsay, to testify as to what the doctor told him would be hearsay. It is objectionable on that ground.

Q. (By Mr. Gay): You returned to the ship, did you? A. Yes.

Q. And was that with the consent of the doctor in Yokosuka?

A. That was with consent of the doctor.

Q. And did he give you any medicines or pills to take, and any instructions as to what to do with the finger?

A. Yes, he gave me some Epsom Salts, what they didn't have [12] aboard the ship, and he gave me penicillin.

The Court: You say he gave you Epsom Salts?

A. He gave me Epsom Salts, what they didn't have aboard the ship, and gave me penicillin.

Q. (By Mr. Gay): When did they run out of Epsom Salts?

A. Just before we arrived in Yokosuka. I had to use cooking soda to soak my hand.

Q. Did he give you some penicillin?

A. Yes, he gave me—he asked me how long would that trip back be. I told him about eight days, and

(Testimony of Otto G. Clavel.)

he gave me some penicillin to take back with me, and I asked him—he said, “Well,”——

Mr. Schaldach: Just a moment, Mr. Clavel. I object to what the doctor told you as hearsay.

The Court: Yes, sustained.

Q. (By Mr. Gay): You returned on the ship, did you? Did you do any work on the way back, Mr. Clavel?

A. No, I didn't. The last few days the Mate asked me to supervise the bending of the mast, because he had a lot of work to be done, so I supervised that work, but I couldn't work with my hands.

Q. Do you remember what day of the week it was you arrived in San Pedro?

A. It was Saturday.

Q. When did you get paid off? [13]

A. The 24th—the 25th of May.

Q. How many days elapsed, if you recall, from the time you got to San Pedro until you were paid off?

A. About three days.

Q. And then what did you do?

A. As soon as I was paid off, I took a plane and came to San Francisco, because I wanted to be home, and I went to the Marine Hospital and they took me the next day.

Q. How long did you remain as an in-patient?

A. Twenty-one days first——

Q. What sort of treatment did you receive there?

A. The same treatment, penicillin.

Q. How often? A. Eight times a day.

Q. For how many days?

(Testimony of Otto G. Clavel.)

A. For twenty—I mean twenty-one days. It might have been twenty.

Q. Did you do anything else for your hand there?

A. Well, they soaked it—put it in an oven with Epsom Salts.

Q. In an oven?

A. Oven, an electric, what they call a basket.

Q. And then after twenty-one days you were made an outpatient; is that right?

A. For one month I remained an out-patient, because my hand [14] was altogether stiff by then, and they started to move my fingers back again. My fingers were moved for thirty days.

Q. How often did you report to the hospital while you were an out-patient?

A. Every day I had to go to the therapy ward for my treatment.

Q. Did they take you back to the hospital later on?

A. Well, after thirty days I had to see the doctor—he wanted to talk to me, and he didn't want to operate on it yet, because he thinks there is still infection in the finger, to come back in three weeks, so I came back in three weeks and they amputated the finger.

Q. And they removed the finger?

A. Below the knuckle.

Q. Back of the—— A. Knuckle.

Q. ——knuckle? A. Yes.

Q. Did the finger heal up all right?

A. Yes, the finger healed up all right.

(Testimony of Otto G. Clavel.)

Q. And after it healed up, how was it; was it sensitive, or not?

A. Was it sensitive? I didn't dare to go back to work, because on board ship you hit your hands all the time. I didn't dare to go back to work, so I stayed ashore until March [15] the following year, that was 1949, the second of March I shipped out on the Mission Dolores.

Q. What ship?

A. The Mission Dolores, the same company.

Q. That is a tanker also? A. A tanker, yes.

Q. Did you experience any difficulty in working when you went back to work?

A. Well, on that first trip when we came to Japan it was very cold and sleety, and I couldn't stand that terrible pain, the finger was too sensitive, this finger and this finger besides (indicating).

Q. You indicate the middle finger?

A. Yes, the middle finger, too. So I told him, "I hate to quit when I come back."

He says, "Well, the weather is getting warmer. Perhaps you can try to make another trip." So I stayed on this ship for ten months, and then I quit, I had to quit.

Q. What, if any, difficulty do you have with that hand at the present time, Mr. Clavel?

A. Well, the finger is awfully sensitive and all the time cold, and so is this knuckle here (indicating).

Q. Indicating the middle finger?

A. The middle finger, too, but this is worse. This, too, this is swollen up (indicating). [16]

(Testimony of Otto G. Clavel.)

Q. When does it bother you the most?

A. In cold, wet weather.

Q. Now, will you just show his Honor the extent to which you can close your hand? (The witness demonstrates.) You can't bring this finger down? (Indicating.) A. No.

Q. And is it enlarged in the joint here from what it was before? A. Yes.

Q. Does this finger also bother you in cold weather? A. Yes, this does, too. (Indicating.)

Q. Was that the reason that you got off the "Mission Dolores"?

A. That is the reason I got off the "Mission Dolores," yes.

Q. In your opinion, are you able to work during the cold months of the winter?

A. No, I can't. I can't fulfill my duties properly.

Q. (By the Court): When was it you left the "Dolores"?

A. The 28th of December.

Q. The what? A. The 28th of December.
Mr. Gay: 1949.

The Court: And you haven't shipped since then?

A. No, sir.

Q. (By Mr. Gay): Now, in doing your work, is there any particular work that you have difficulty in doing by reason [17] of the injury to your hand?

A. Mostly in handling loads, or, for instance, I can't hold a hammer very tight any more. I get a hammer in my hand and it drops out of my hand

(Testimony of Otto G. Clavel.)

because I haven't got the proper grip any more.

Q. Did the vessel have a radio, Mr. Clavel?

A. Yes.

Q. Did the Pacific Tankers have other vessels on that same shuttle run?

A. Yes, quite a few of them; quite a few of them.

Q. How many, if you know?

A. Well, I couldn't say, about fifteen, eighteen or twenty, around there.

Q. Traveling, going back and forth on the same approximate course that you were on?

A. Yes.

Q. And on this voyage along through here on April 24th, 25th, 26th, 27th, and 28th, and so on, did you pass other vessels?

A. We did, yes.

Q. Large vessels?

A. Tankers. All tankers.

Q. What were your monthly earnings on the Picos? What was your monthly pay?

A. \$250.00 those days.

Q. Has it since been increased? [18]

A. It is \$300.00 now.

Q. And did you receive overtime pay?

A. Yes, I made an average of \$180.00 overtime a month.

Q. (By The Court): A hundred what?

A. \$180.00.

Q. (By The Court): One hundred and eighty?

A. Yes.

Q. (By Mr. Gay): So that your total earnings

(Testimony of Otto G. Clavel.)

at that time were—how much did you say the base pay was, two hundred what?

A. Two Hundred and Fifty.

Q. Two Hundred and Fifty and about One Hundred and Eighty?

A. A dollar forty for overtime.

Q. At that time your earnings were about \$430.00 per month; is that right? A. Yes, about.

Q. After you went back to work, you have testified that you worked on the same type of vessel, the Dolores, and you were on there approximately ten months. How much did you pay off with from the Dolores, what was your total earnings?

A. \$4,800 in ten months—four days less than ten months, your Honor. I have the slip here.

Mr. Schaldach: Well, that is approximately \$400.00 a month, Mr. Gay.

Mr. Gay: That is \$4,800 even?

A. Well, I have my slips here. There may be some slight pennies difference, but it is \$4,800. [19]

Q. In a little less than ten months?

A. Four days less than ten months.

Q. Now, Mr. Clavel, do you know of your own knowledge what drugs are customarily carried in the medicine chests of vessels?

Mr. Schaldach: Just a moment. Your Honor, I object to that as incompetent, irrelevant, and immaterial, no foundation laid whether this man ever acted as a pharmacist or medical man aboard any vessel. It is a licensed officer or a pharmacist mate, if the vessel is a large one.

(Testimony of Otto G. Clavel.)

The Court: If he knows of his own knowledge, he may answer. Overruled.

A. What is the question?

Q. (By the Court): Of your own knowledge, what medicines do vessels carry?

A. They carry penicillin, they carry bandages, they carry all kinds of salves.

Q. Can you name some vessels you have been on that carried penicillin?

A. Well, the last ship I was on the Captain always had a big supply of penicillin.

Q. That is the Mission Dolores?

A. That is the Mission Dolores.

Q. A tanker? A. Of the same company.

Q. Have you been on any others where they carried penicillin?

A. I was on the tanker Coquill; she carried penicillin.

Q. (By the Court): When were you on that vessel? A. Two years ago.

Q. I assume before you were on the Picos?

A. Yes.

Q. Did the Picos have penicillin on board on the return trip from Japan? A. Yes.

Q. Do you know that of your own knowledge?

A. I saw the Captain when we were at Yokosuka Navy Hospital there, the Pharmacist Mate gave me three or four boxes of penicillin.

The Court: That was before you left Japan to go to the Persian Gulf?

(Testimony of Otto G. Clavel.)

A. No, before we left Japan to go back to San Pedro.

Mr. Gay: On the return voyage.

Mr. Schaldach: That is after this happened.

The Court: Yes.

Q. (By Mr. Gay): Were you given any penicillin on the return voyage? A. No.

Q. Did you ask for penicillin?

A. I asked for it, yes.

Q. What was the reply? [21]

A. Well, the Mate told me——

Mr. Schaldach: Just a moment, your Honor. I object to that as no foundation laid as to who he had the conversation with.

The Court: Sustained.

Q. (By Mr. Gay): Who did you ask for it? Who did you ask for penicillin?

A. I asked the Mate for penicillin.

Q. And what did he reply?

Mr. Schaldach: Now what Mate are you talking about?

Mr. Gay: All right. Was this on the return voyage?

A. The Chief Mate was the one I talked to. The Second Mate hardly had anything to do with it.

The Court: That is the trip from Japan back to the United States?

A. Back to the United States, yes.

Q. You asked the Mate for penicillin?

A. For penicillin.

Q. What did he say?

(Testimony of Otto G. Clavel.)

A. He said he couldn't give it to me, because he had a gonorrhea case and a syph case, and they needed it.

Mr. Gay: You may cross-examine.

Mr. Schaldach: Take the recess, your Honor, at this time?

The Court: Very well.

(Recess.) [22]

Cross-Examination

By Mr. Schaldach:

Q. Now, Mr. Clavel, you stated that it was on the 23rd day of April that you were making this hook and that you pricked your finger?

A. Yes.

Q. And you treated—you washed and put a bandage on it after that?

A. My own bandage, yes.

Q. Your own bandage. You didn't report that to anyone, did you, on that day? A. No.

Q. You didn't report it, as a matter of fact, for some three days after?

A. No—Saturday—it was exactly Saturday I told the Mate I couldn't work overtime this afternoon, my finger hurt me too much.

Q. You said it was Saturday, the next day, you told the Mate?

A. Yes, I told him. He wanted me to work overtime.

(Testimony of Otto G. Clavel.)

Q. He wanted you to work overtime, and that was the first time you told him?

A. That was the first time. I told him in the afternoon, see, I am knocking off, I can't do the work.

Q. (By The Court): Did you tell him why you couldn't?

A. I told him my finger hurt me. [23]

Q. (By Mr. Schaldach): Now, are you sure it wasn't the twenty-fifth the first time you talked to the Mate about it?

A. It was the twenty-fourth, it was Saturday.

Q. It was Saturday?

A. Saturday afternoon.

Q. And did the Mate do anything on Saturday for your finger?

A. He did not. He said, "See how it is tomorrow, and then come to me."

Q. And on the 25th you came back to him?

A. I reported first to the Captain.

Q. You reported first to the Captain. The Chief Mate, Mr. Coward, he was the medical officer aboard that vessel, wasn't he?

A. He did all the treatment.

Q. He did what?

A. He did everything aboard the ship.

Q. He did everything aboard the ship in the way of medical treatment? A. Yes.

Q. Do you know whether or not he had a medical certificate, a first aid certificate?

A. No, I don't know that.

(Testimony of Otto G. Clavel.)

Q. Do you know, Mr. Clavel, that all officers aboard vessels are given first aid medical information before they become officers? [24]

Mr. Gay: Object to that as being argumentative, if your Honor please.

The Court: Overruled.

Q. (By Mr. Schaldach): You have been going to sea for forty-seven years, haven't you?

A. Yes.

Q. You know of your own knowledge that all the licensed officers are given a first aid course, don't you? A. Yes.

Q. Before they can become an officer, they have to have some knowledge of first aid and medical treatment to meet situations at sea of this nature; is that correct?

Mr. Gay: Whether it is of this nature, if your Honor please, I will object to that as argumentative.

The Court: Well, yes. If you limit it to ordinary scratches, I will permit it.

Mr. Schaldach: Isn't that right, Mr. Clavel?

A. I suppose so.

Q. You suppose so. Now, on June 22 of 1948 you gave a signed statement about the happening of this matter, didn't you, to Mr. Hall of our office?

A. Right.

Q. You did. I will show you this document of two pages and ask you if on each of the pages your signature appears at the bottom there?

A. Yes, that is right. [25]

Q. You remember giving that, don't you?

(Testimony of Otto G. Clavel.)

A. Yes.

Q. Didn't you tell Mr. Hall that after the time that you pricked your finger with this sail hook that without reporting this incident to anyone you washed the finger and looked around for a band-aid, "but as I was unable to find one, I continued my duties and finished the job of sewing the canvas in question. My finger seemed to be in a satisfactory condition for a period of about three days, but at the end of that period it began to swell."

Did you tell that to Mr. Hall?

A. I must have, if it is in that statement.

Q. How is that?

A. I must have, if it is in that statement.

Q. You must have told that to Mr. Hall. And then after you reported it to the Chief Officer, he gave you some Epsom Salts in hot water, and you used that treatment; isn't that correct?

A. Yes.

Q. And he knocked you off work, he said you didn't have to work now?

A. Right.

Q. "I want you to stay down here and take care of that finger, soak it in Epsom Salts"?

A. Right.

Q. And how many times a day did you do that?

A. Every two hours.

Mr. Gay: Pardon me, your Honor, I have a doctor here. Would it be satisfactory——

The Court: Yes. Step down.

DR. FRANCIS J. COX

called for the Libelant, sworn.

Direct Examination

By Mr. Gay:

Q. Dr. Cox, you are a physician and surgeon licensed to practice and practicing in the City of San Francisco, are you? A. Yes, sir.

Q. Will you tell his Honor about your education, experience and qualifications, and specialty, if any?

A. I graduated from the University of California Medical School. I have had post graduate training in orthopedic surgery. I am a member of the American Board of Orthopedic Surgery, and Assistant Professor of Bone and Joint Surgery at Stanford University Medical School. I am in charge of the orthopedic service at the San Francisco Hospital, and I am a Senior Consultant in Orthopedic Surgery to the Veterans' Administration at Fort Miley.

Q. Did you examine Mr. Clavel at my request?

A. Yes, sir.

Q. Will you state when you examined him and what you found? [27]

A. I examined Mr. Clavel on the 25th of February, 1950, and I obtained the following history from him, that on the 24th of April, 1948, he was employed as a Boatswain aboard the U. S. Navy tanker Picos. The ship was sailing in the Indian Ocean at the time, and he said he was filing a nail to make a sail hook when he accidentally scratched

(Testimony of Dr. Francis J. Cox.)

the dorsal aspect of his right index finger. Later on he sewed some canvas which was impregnated with Paris green dye. He didn't think much of the wound at the time, simply washed the wound out and covered it with a Band-aid for the first day, and then the next day the hand became exceedingly painful and swollen, and he reported it to the Chief Mate and stopped working. He started using Epsom Salt soaks on the hand, and the finger and the hand became more and more swollen and about the fourth or fifth day the finger was very badly discolored and the hand swollen and red. The finger was lanced by the Mate. The patient states some pus was obtained. Following the lancing, the right index finger continued to be stiff, painful, and swollen. The top of his hand also became involved in the infection.

The ship continued to Japan. The ship arrived there approximately ten or eleven days after his original injury and within about five days after the finger was lanced and bandaged by the Mate.

He was sent to the Navy Hospital and given some penicillin there. The acute nature of the infection in the hand [28] subsided to some degree and he was put back on the ship and allowed to continue to the United States.

Following arrival in San Pedro, about eighteen days after leaving Japan, he came immediately to San Francisco and was admitted to the Marine Hospital in San Francisco. He remained hospitalized for twenty-one days, and during that time was

(Testimony of Dr. Francis J. Cox.)

given a course of physio-therapy there. His hand was quite stiff and he was sent to the physio-therapy department for about a month. After that treatment was stopped, the hand was still kept under observation for another three weeks or so, and then finally around the middle part of August the right index finger was amputated through the distal portion of the proximal phalanx. That is this joint of the proximal interphalangeal joint (indicating).

The amputation stump healed. The patient still had some pain and difficulty with his hand and said that he was unable to work until the first of March of 1949. At that time he returned to work as a Boatswain and continued to serve until about two months prior to the time I examined him.

He was still at the time I saw him complaining of a disturbance of function in the grip of the hand, first due to the loss of the index finger, or a portion of it, and secondly because of some restriction of motion in the adjacent fingers. He also complained of weakness which was coincidental with the difficulty in grip, and he complained of some pain in his [29] amputation stump. The pain in his amputation stump he described as being worse during damp, cold weather, and that it was somewhat better during warmer weather.

He gave me a history in the past of having had a rather serious fracture of the mandible in 1938, which became impacted, requiring some reconstruc-

(Testimony of Dr. Francis J. Cox.)

tive surgery. He said he had still some trouble because of this injury.

Otherwise, his history was essentially non-informative.

So far as a physical examination was concerned, there was nothing particularly abnormal except with respect to the right hand. He had an amputation through the right index finger, through the distal end of the proximal phalanx. The amputation stump was scar covered with soft, pliable skin. It wasn't thickened at any point. There was no positive evidence of oidium, which is an inflammatory change, in any of the distal nerves at the end of that stump. The amputation scar cover surrounded the proximal interphalangeal joint—that is the proximal joint as I demonstrated on my hand—of the middle finger, and there was some definite restriction of mobility in the intrinsic joints of that finger.

In attempting to make a grip, the tip of the right middle finger failed to touch the proximal crease by a distance of one and a half inches. That is as you bring the hand down into a grip functionally the digit came to a point approximately one and a half inches from the proximal portion of the [30] palm, and the finger also failed to touch the distal palm crease by three-quarters of an inch. Those are measurements used to indicate the degree of motion.

The fourth and fifth fingers showed a normal range of movement, so the majority of limitation

(Testimony of Dr. Francis J. Cox.)

of movement was in the index and middle fingers. The fourth and fifth showed normal range.

So far as the grip function was concerned, there was definite disturbance in gripping power. The patient is a right-handed individual, and the grip function in the right hand was measured at 75 kilograms as against 100 kilograms on the left side. That does not necessarily mean that there is a one-fourth difference between the two hands, because of the fact that normally a person who is right handed should have a grip power in his major hand which is somewhat in excess of his minor hand, the left hand.

I did not obtain X-rays of this patient, because I felt none were indicated. He had a very satisfactory amputation, he had a restriction of motion in his finger, he had some loss of gripping power, which is entirely compatible with the loss of the digit, and with the restriction of mobility in the interphalangeal joint of his middle finger. I felt that his disability was perfectly evident and nothing further would be added by additional X-rays.

Q. Now, Doctor, you have stated that the patient complained [31] of pain in the stump and the adjacent finger in cold weather. Is that a reasonable complaint, and, if so, what causes the pain?

A. That is an entirely reasonable complaint, but the exact cause of it, however, is one which we as doctors have not quite found as yet. It is commonly termed the causalgia type of pain, and that term is used for lack of a more anatomical term. It is

(Testimony of Dr. Francis J. Cox.)

purely a descriptive term. Wherever amputation of an extremity has been executed, the patient may well have symptoms of phantom pain in that portion of the limb or digit which has been amputated, any many times the symptoms of causalgia pain are made worse during changes in weather. Some theorists say it has something to do with changes in atmospheric pressure, but whether or not that is a fact I don't know.

The Court: Will that improve in time, or not?

A. Generally it will improve immediately after an amputation, but here it is a year and a half after the amputation and the causalgic factor of pain remains unchanged.

Q. (By Mr. Gay): Now, Doctor, it is the testimony here, and I believe it is the history that the patient gave you, that he suffered a slight scratch on one day and then two or three days after that the finger was very much swollen and painful, and also shortly after that the hand and also the forearm became swollen. Does an infection or can an infection proceed in that manner? [32]

A. A virulent infection can proceed that rapidly.

Q. What is the proper treatment for an infection of that type?

Mr. Schaldach: Well, now, I will object to that. There are several different types of infection and under different circumstances, and the question is too general.

The Court: The doctor can answer it. Overruled.

(Testimony of Dr. Francis J. Cox.)

A. A virulent infection is best handled by complete immobilization and the administration of antibiotics such as penicillin or one of the newer ones, such as streptomycin.

Q. (By Mr. Gay): Doctor, will you state whether or not penicillin was generally known and used in April, 1948?

A. Yes, it was universally available in 1948; at least in the American market.

Q. Was it a recognized treatment for infections at that time?

A. Definitely recognized at that time.

Q. Now, Doctor, it has also been the testimony that this injury, the original scratch, was suffered on or about April 23, 1948, and that the patient reached a hospital in Yokosuka on or about May 4, 1948, and at that time the hand was swollen and the finger had—the index finger, which previous to the accident had been straight, was crooked down to a right angle. Can you state what would cause the finger to crook in that fashion, just having knowledge that he had an infection? [33]

A. On a purely theoretical basis, and that is all that I can use, if the patient did have an infection in the finger or in the proximal interphalangeal joint which would spread into the soft tissues, then it would cause an extension of the infection into the tendon sheaths, and this being the flexor tendon, that sheath as it became involved would pull the finger into position of a flexion. In any infected hand or finger the attitude is always one of flexion of the fingers.

(Testimony of Dr. Francis J. Cox.)

Q. What can you say, if you can answer the question from the facts as given to you as to the advisability of an amputation of the finger down into the hand or at—in Japan and while some infection still persisted?

A. Well, that is a difficult question for me to answer, because it poses a problem, and if you present the problem in this sense, that the patient had infection active in the palm, then I would say that the amputation was ill advised. In this particular instance I would say that the patient is fortunate that the amputation was not done, because he has a better hand for not having had that procedure done. He has salvaged more use in his extremity for the fact that the amputation was not performed at a higher level.

Q. And as the patient now is as you observed him, is any further operation indicated or not?

A. I would definitely say no.

Mr. Gay: You may cross-examine. [34]

Cross-Examination

By Mr. Schaldach:

Q. Doctor, boiling it down, this man has a partial loss of the right index finger, doesn't he, as indicated by the amputation? A. Yes, sir.

Q. And he has some limited motion of the right middle finger? A. Yes, sir.

Q. A little bit of limited motion, not too much?

A. That limitation is not a question of loss of

(Testimony of Dr. Francis J. Cox.)

motion of the interphalangeal joint; the limitation as I see it is a failure of the grip function in the two opposing digits through which grip is created against the palm; so that he could have that limitation of motion in his fifth finger with little or no difficulty, and his fourth finger with less difficulty or with slightly more, but having lost the index finger then the limitation of motion in the middle finger is of greater importance. The main effect is that he cannot make a grip. It isn't the loss of motion in the interphalangeal joint so much as it is——

Q. The loss of the index finger?

A. No, sir. I say the loss of grip function.

Q. There is no causal connection between the infection that was present in that index finger and the loss of extension or motion in the middle finger, is there?

A. Yes; I would disagree with that statement completely. There is, I would say, definitely and positively a relation between the two. [35]

Q. In what way, Doctor?

A. There is a small cellulitis in the interstitial fibers and the soft tissue of the capsules of the interphalangeal joint, of the tendon sheaths and of the other vital structures surrounding the tendons and joints. In short, I have seen patients who have not had anything other than a simple cellulitis who have wound up with stiff fingers. You can get a stiff finger from nothing more than simple immobilization following a fracture with no

(Testimony of Dr. Francis J. Cox.)

infection whatsoever. It is the swelling, the edema, and the scarring that occurs in the deeper structures that causes the stiffness.

Q. Doctor, you say you examined this man for the first time on February 25 of this year?

A. Yes, sir.

Q. You had no previous examination of this man? A. No, sir.

Q. The pad, Doctor, that is over that finger is in good shape? A. Very good shape.

Q. No neuromas there, you said?

A. No, sir.

Q. And he gives you, does he, the history of the fact that it aches in cold weather?

A. Yes, sir.

Q. And you attribute that to—what is that name, Doctor? [36] A. Causalgia.

Q. There is nothing objective that you can put your finger on that causes that, is there?

A. As I indicated, I believe, before, there is no known cause for it. It is all—first let me say that it is very common following any amputation. Second, it is thought to be caused by some reflex mechanism through the sympathetic system, but I have known patients who have had causalgic pain of rather severe grade who have had series of amputations through any extremity and the pain has persisted. It is a real entity even though we are unable to classify it entirely on an anatomical basis.

Q. There is no evidence of atrophy of any of the fingers or the hand?

(Testimony of Dr. Francis J. Cox.)

A. The right hand, yes, I did mention, because it is rather obvious to me that with the loss of normal grip function there is some atrophy of the intrinsic musculature.

Q. Did you make some measurements?

A. There is no way to measure the atrophy of the intrinsic musculature of the hand.

Q. I am talking about the hand. There is no atrophy about the hand generally, is there?

A. No, he has a very good function of the extremity, although it is not perfect, but it is functional anatomically, and that is the reason I believe no further treatment is [37] indicated.

Q. Neither would you suggest any surgery or any physio-therapy on the hand?

A. I think his hand is as good as it is going to get now, so that no further medical treatment is indicated or needed.

Q. Did you take the grip measurements of the right hand and left hand, Doctor? A. Yes.

Q. What percentage did you find he is lacking in the right hand?

A. The actual measure of the lack is a lack of 25 per cent. However, as I indicated before, that lack is not accurate, because this is his major extremity, and usually in a normal individual there will be perhaps an improvement of 20 to 25 per cent in the grip function of the major extremity as compared with the minor. So although the measurable change is 25 per cent, I would make that

(Testimony of Dr. Francis J. Cox.)

figure just moderately higher than that, about 35 per cent.

Mr. Schaldach: 35 per cent. I see. That is all.

Redirect Examination

By Mr. Gay:

Q. I have just one or two more questions, Doctor. Are penicillin and sulfa drugs ever given in combination?

A. Yes, they are. They are given in combination in the presence of certain types of mixed infections, where there is [38] one strain of organism which is resistant to perhaps penicillin, a strain of organism which might be hit by the sulfanalamide or the sulfa drug.

Q. And would you state, Doctor, just generally how efficient or potent, if that is a better word, penicillin and sulfa drugs have been found to be in cases of infection?

A. Well, speaking from my own experience, we started using sulfa just before the war and we found it fairly advantageous. However, when penicillin first hit the medical profession during the war in 1943, the difference between the two drugs was amazing, because the specificity of penicillin for many of the ordinary routine types of infections was so much superior to sulfa that there was no comparison between the two, and I believe that fact still holds. Penicillin is far above, superior for the average common ordinary type of infection that we see to any of the sulfa preparations.

(Testimony of Dr. Francis J. Cox.)

Mr. Gay: That is all.

Recross-Examination

By Mr. Schaldach:

Q. Doctor, assuming for the moment this man, Mr. Clavel, was aboard a tanker and he had not given you any history and there was no penicillin or sulfa drugs in the medicine chest of that vessel and he had an infection which is indicated of the right index finger which did not appear to be serious on the second day after it happened, what would be the treatment indicated, Doctor, if you were the [39] medical officer aboard that vessel?

A. The treatment indicated would be to rest it, to apply heat in the form of hot soaks and to give the patient as much supporting therapy as could be furnished. In short, I would keep continuous hot soaks on the hand, keep it under observation, keep it as quiet as possible. From my own experience I would say complete bed rest, but whether that is possible on a tanker or not I don't know.

Q. Assume the man was taken off work, told to knock off, would that be one of the things you would do? A. Yes, very definitely.

Q. You would soak it in hot Epsom Salts? If you had them aboard the vessel, and if you had any ichthyol or ichthymol ointment would you apply that as a drawing power to bring it to a head?

A. If you are talking—I would say no.

(Testimony of Dr. Francis J. Cox.)

Q. In other words, you would continue the Epsom Salts soaking treatment? A. Yes.

Q. That would have a drawing power to bring it to a head, if you soaked it in hot Epsom Salts every two hours?

A. That is true, by creating hyperemia, which has the power of collecting an increasing supply of blood to the area so that a barrier can be more easily built up by the body against the infection or infecting organism. All of the things that [40] you are talking about do that same thing, except through different physical means.

Q. And, Doctor, if that came to some sort of a head, a bag of pus or something of that nature on his finger, would you lance it to relieve the pressure? A. Yes, definitely.

Q. That is indicated treatment, isn't it, to lance it to relieve pressure?

A. Not only to relieve the pressure, but to prevent further spread of the infection that is a logical thing to do.

Q. And would further soaking thereafter further reduce the edema, if any, in the hand and the fingers? Is that correct? A. Yes.

Mr. Schaldach: That is all.

Redirect Examination

By Mr. Gay:

Q. Now, I have one further question. Doctor, assuming further that after two or three days the whole hand, not only the index finger swollen to

(Testimony of Dr. Francis J. Cox.)

twice its normal size, but the hand becomes very badly swollen and was red and blue and purple and yellow, and also the swelling got up into the forearm, would you say that that indicated anything for concern?

A. I think that is a cause for major concern, because you are dealing with a man's right hand.

Q. Pardon me?

A. You are dealing with a man's right hand, the most important [41] member that he has to live with. I mean it is of extreme importance.

Q. And would you say under those circumstances, if the hand and arm were in the condition that I have described that expert medical care was vital?

A. I would feel definitely so.

Q. And would you say that a course of penicillin treatment would be indicated?

A. Definitely.

Mr. Gay: That is all.

Mr. Schaldach: No further questions. Thank you.

OTTO CLAVEL

the libelant, resumed the witness stand, previously sworn.

Cross-Examination

(Continued)

By Mr. Schaldach:

Q. Now, Mr. Clavel, did you keep notes or records of any of these dates that you first pricked your finger and the date that you first went to see the Chief Mate and the date that you first talked to him? A. Yes, I did.

Q. You did keep a record note of that?

A. Yes.

Q. And the time on the vessel?

A. Yes, I have those dates written down.

Q. You say you do have those dates written down? [42]

A. I have those dates written down.

Q. When did you make that writing?

A. I made it after we came to Yokosuka. I asked the fellow who was there to write it down for me, because I remembered still the date. I remembered the dates, and I asked a fellow, a fellow whom I knew, to write those dates down for me.

Q. You asked him to write them down?

A. Yes.

Q. Who was the fellow?

A. He was a fellow who laid in the Yokosuka Navy Hospital with a broken leg.

Q. Did you keep that piece of paper?

(Testimony of Otto Clavel.)

A. I kept that piece of paper, yes. I have it somewheres home.

Q. What is the last time you saw that?

A. Oh, after I came out of the hospital.

Q. After you came out of the hospital. And did you have that piece of paper on you or in your possession on June the 22nd, 1948, when this statement was taken from you? A. I must have.

Q. You must have had it then, and did you refer to that piece of paper with those dates on it when you gave this statement?

A. I did not exactly.

Q. You did not exactly do that; is that what you said? [43]

A. I didn't exactly do that, no.

Q. Well, Mr. Clavel, on June 22, 1948, your memory about this would be a lot better than it is now; isn't that true? A. Well, yes and no.

Q. Well, here two or three months after the accident, wouldn't your memory be better then than it is at the present time? It would be fresher in your mind, wouldn't it?

A. I just came out of the hospital and by that time I felt the finger would be saved, it wasn't amputated.

Q. Well, Mr. Clavel, you were making a claim because of the fact that you had an injured hand?

A. That is right.

Q. And you gave Mr. Hall all the information regarding that hand?

(Testimony of Otto Clavel.)

A. I gave the information how they were put in my mouth.

Q. I don't understand, Mr. Clavel.

A. Well, Mr. Hall suggested some things, and I would say yes.

Q. Oh, he suggested certain things and you said yes? A. Yes.

Q. Mr. Clavel, did you read this statement after Mr. Hall had it typed up for you?

A. Yes, I did.

Q. You read it? A. Yes.

Q. Did you make any objection to anything he had in there as [44] not being what you told him?

A. No, I didn't, because Mr. Hall said, "Now, don't you worry a bit, we will take care of you."

Q. And he did, you got maintenance, didn't you?

A. Yes, I got two months.

Q. You were paid maintenance?

A. Yes, two months.

Q. And you were paid transportation, weren't you? A. Yes.

Q. In other words, you gave Mr. Hall all you figured you knew about this case at that time, is that right?

A. Well, Mr. Hall told me, "You will be fixed up all right, don't you worry, we will take care of you."

Q. But you read the statement, did you?

A. Yes, I did.

Mr. Schaldach: Your Honor, I will ask at this

(Testimony of Otto Clavel.)

time the statement be introduced into evidence as Respondent's first in order.

Mr. Gay: No objection.

(The document referred to was marked Respondent's Exhibit A.)

Mr. Schaldach: Now, what was the name of the Captain aboard that vessel, the Picos?

A. Johanson.

Q. Johnson or Johanson? What was the First Mate's name? [45] A. Coward.

Q. Do you remember what the name of the Second Mate was? A. No.

Q. You don't remember him. Did you ever talk to the Second Mate about this, or complain to him about your hand?

A. No. The Boatswain has nothing to do with the Second and Third Mates.

Q. I see. The only complaints made were to the First Mate and the Captain?

A. That's right.

Q. Those are the only two? Is that right now, Mr. Witness? A. Yes.

Q. All right. Now, when was the first time that you made any complaint or any suggestion to either the Captain or the First Mate that they radio to some hospital for information concerning your hand? What was the first date?

A. It was the third day after I reported the accident to the Captain.

Q. That was the third day after you reported the accident to the Captain?

(Testimony of Otto Clavel.)

A. No, it was the third day after the accident happened, and my hand was so bad—I reported the accident to the Captain then.

Q. You reported the accident to the Captain first?

A. First, and then naturally I have to go to the Mate, because [46] he is the medical officer.

Q. Then you went to the Mate. Did he send you to the Mate? A. Yes.

Q. He did. Did they make out a report regarding this, Mr. Clavel? A. Yes.

Q. Well, did you see them make out a report?

A. No, I didn't.

Q. You didn't see them make out any report, but you gave the information to the Captain or the Chief Mate, who? A. The Captain first.

Q. You gave it to the Captain. Do you know where the vessel was, the position of the vessel with respect to these various points on the chart here when you first asked the Master to radio for some medical aid?

A. Well, it must have been past Singapore.

Q. It must have been past Singapore?

A. Past Singapore.

Q. You just think it was, or is that your best recollection?

A. Well, that is the best—because, after all, the Boatswain has nothing to do with navigation.

Q. I see. The vessel was past Singapore when you pricked your finger, wasn't it?

A. No, it wasn't.

(Testimony of Otto Clavel.)

Q. Where was it with relation to [47] Singapore?

A. I remember that accident very clearly, because the Mate told me, "Boatswain, you go ahead and sew that awning as fast as you can, because tomorrow we go through the straits and the fellows are going to swelter on the poop deck." So he asked I finish the awning——

Q. The next day after that——

A. The next day we passed the Straits of Singapore.

Q. The next day you passed the Straits of Singapore. And it was two days after that that you first made the complaint? A. That is right.

Q. You passed Singapore on the 24th of April, and on the 25th and the 26th the vessel was opposite Padaran, is that correct, or French Indo China; do you know that? A. No.

Q. You don't know that. When was the next time you said anything to the Captain about getting any medical aid?

A. I told him from then on every day. I asked him every day, whenever I saw him.

Q. What did you say to the Captain?

A. Well, I asked him to do something about this hand. I would say, "Give me penicillin." He says, "I haven't got any." I says, "Well, you have a radio on board, it won't cost you a fortune if you call up a hospital somewheres and ask for instructions about the hand." Because the hand started to get all red, green and blue. I would say, "I have only one hand, [48] Captain."

(Testimony of Otto Clavel.)

He says, "The Mate is taking care of you."

Q. The Mate was taking care of you every day, wasn't he? A. Yes.

Q. And the Mate had you soaking that hand every two hours in hot water and Epsom Salts?

A. Yes.

Q. Now, what was the date they lanced that finger? A. It was around the 27th.

Q. The 27th? A. Yes.

Q. Could that have been the 28th?

A. No, the 27th.

Q. Are you sure of that?

A. It was the 27th.

Q. The day they lanced the finger?

A. Yes.

Q. And after they lanced it, the swelling went down, didn't it?

A. No—I think this finger now, this went down, this healed up (indicating).

Q. The soreness went down in the finger?

A. In the forearm. This finger here was still swollen up, and then the other finger started to get very swollen up, and the whole hand swole up and puffy. [49]

Q. In other words, it got puffy on the back of your hand from the proximal phalangeal joint to here?

A. It came clear from here (indicating), and that finger started to crook after that, it crooked more and more.

Q. Was the finger lanced again from the time

(Testimony of Otto Clavel.)

they lanced it to the time you got to Yokosuka?

A. No. This part drained very little.

Q. It was still an open wound, wasn't it?

A. This was healed up. He put some green stuff on it. Where he cut it, that healed up, but that part started to drain (indicating).

Q. When the vessel got to Yokosuka—what time did the vessel get there, incidentally?

A. About three o'clock in the afternoon.

Q. And they took you the following morning to the hospital? A. Yes.

Q. The Captain took you and several others up to the Navy Hospital? A. Right.

Q. And you were left there at the Navy Hospital, weren't you? A. Yes, sir.

Q. And they gave you penicillin treatment there? A. And sulfa.

Q. And the vessel was going to leave on the—on what day, do you remember? [50]

A. Three and a half days later.

Q. It was going to leave on the 7th, wasn't it? You went in the hospital on the 4th, and the vessel was going to leave on the 7th? A. Yes.

Q. And the Captain wanted you to stay in that hospital and get treatment?

A. The Captain never came to the hospital to see me. The only one who saw me was the Mate—in fact, the Mate didn't see me. They only sent a man down there, and I asked him to get me cigarettes, because I was out of cigarettes.

Q. You never saw the Captain? A. No.

(Testimony of Otto Clavel.)

Q. Didn't you see the Chief Mate?

A. I saw the Chief Mate there when he brought me there, and the Captain was there at the same time.

Q. The Mate took you to the hospital didn't he?

A. Yes.

Q. And he brought you back from the hospital, didn't he?

A. The Mate didn't bring me back, the station wagon of the United States—in fact, the Chief brought me back. The Mate was aboard when I got aboard.

Q. Didn't you tell the Mate, "Please don't leave me in this hospital; when the vessel leaves I want to go back to the States with you"? [51]

A. Well, I asked him in case there can be nothing done with the finger to let me go, but after I asked the doctor in the hospital, he say, "The only thing I can do with your hand—I can't cut"—I asked him to cut this open because it hurt so much, the puff. He says, "No, all I do with your finger, I cut it off here." I said, "I don't want to have it cut." /

Q. But you asked the Chief Mate to be sure to come and get you before the vessel left Yokosuka for the States?

A. Of course, because I was discharged.

Q. As a matter of fact, the doctors at the Navy Hospital wanted to keep you there and give you further treatment, isn't that right?

A. The Navy doctor at the ward say, "If you

(Testimony of Otto Clavel.)

don't want me to cut this finger out of here, I have too many patients here, I have to discharge you."

Q. So he discharged you; is that right?

A. Yes.

(Thereupon, an adjournment was taken until 2:00 o'clock p.m., this date.) [52]

Wednesday, March 22, 1950—2:00 o'Clock P.M.

Mr. Schaldach: If your Honor please, I have Dr. Mensor here. With your permission, may I put him on?

The Court: You may.

Mr. Schaldach: Dr. Mensor, will you take the stand, please?

DR. MERRILL C. MENSOR

called for the defendant, out of order; sworn.

Direct Examination

By Mr. Schaldach:

Q. Dr. Mensor, you are a duly qualified physician, licensed to practice in the State of California, in the City and County of San Francisco?

A. I am.

Q. And for how long have you been practicing your profession, Doctor?

A. Twenty-seven years.

Q. Doctor, do you specialize in any particular branch of medicine? A. Orthopedic surgery.

Q. Will you state your qualifications, Doctor,

(Testimony of Dr. Merrill C. Mensor.)

the medical societies you belong to, hospitals you serve?

A. I am Associate Professor of Orthopedic Surgery at Stanford University; I am Chief of the Orthopedic Department of [53] Mary's Help Hospital, San Francisco; I am Past President of the Western Orthopedic Association, fellow of the American College of Orthopedic Surgeons, Member of the American Academy of Orthopedic Surgeons, Chief of the Orthopedic Staff at Laguna Honda.

Q. Doctor, at my request did you examine Mr. Clavel? A. I did.

Q. On how many occasions?

A. Two occasions.

Q. Will you state the dates on which you examined this man?

A. In November, 1948, and yesterday, March 21, 1950.

Q. November, 1948, and March of 1950?

A. That is correct.

Q. A little over a year elapsed between the first examination and the second examination?

A. Correct.

Q. Doctor, without going into the history at great length, will you tell us what the man gave you, briefly, in the way of history?

A. The man said he was at sea aboard ship, I believe it was the S.S. Picos, and he was working on a canvas awning when he stuck his finger with a needle, a canvas sewing needle. He paid no attention to it at the time, but continued to work on the

(Testimony of Dr. Merrill C. Mensor.)

awning, which was green colored, as I remember, and the green dye got in his finger. [54]

It didn't bother him at first, but as I recall two days later the finger got painful and swollen and he reported it to the Mate for care, the Mate acting as medical officer of the ship at that time.

The Mate applied ointment to it, laid him off duty, had him soak the hand several times a day in hot Epsom Salts, and finally an abscess formed—a collection of pus, let us say, in an area which the Mate opened and allowed to drain, continuing with the soaking until they arrived at a port in Japan where he was sent to the United States Navy Hospital, where I believe he reported for a day or two and treatment given him there. Then he went back aboard ship, the wound was still draining, and he was treated by the Mate from the time they left Japan until they docked in San Francisco.

He then reported to the Marine Hospital here for treatment, and treatment was continued along. let us say, conservative lines, trying to arrest infection and restore function of the finger for a couple of months, and finally it became apparent that although the infection quieted down that the finger would not be of very much use as far as function was concerned, and the finger was partially amputated in the Marine Hospital. When I saw him, the amputation stump had healed and—

Q. On November 1st, 1948, was the date you examined him first. Will you state what you found at that time?

(Testimony of Dr. Merrill C. Mensor.)

A. Yes. I found—it was his right hand, his major hand— [55] I found the right index finger had been partially amputated, so he had a residual stump of an inch and a half measured from the web of the finger to the end of the stump. The pad was well formed, the stump wasn't tender, and there wasn't any indication of any complication of amputation that we might find. In other words, I would say it was a very satisfactory stump as far as the finger was concerned.

As a result of the infection and the injury he had, he did have some limitation of motion in the middle finger of his right hand, and at the time I first saw him even his fourth and fifth fingers were a little limited from non use, so he couldn't quite bring his fourth and fifth to the palm. Of course, this stump could be brought down only partially, due to the loss of the finger.

He had a moderate loss of grip at the time. There was no particular tenderness and no particular loss of function other than I described.

In my conclusion of the case, I thought he no longer needed any further medical treatment. I thought if he used his hand he would regain some function, although he would have a limited disability, and I suggested in my report that the use of his hand in his occupation would be the best way to increase any function he would get subsequently and reduce any amount of disability that would eventually result.

Q. Doctor, do you know, or did he give you the

(Testimony of Dr. Merrill C. Mensor.)

date when the [56] amputation was performed?

A. As I recall, I think he said about two months after he came back to San Francisco. I don't remember the exact date.

Q. Do you have any recollection as to how many months prior to the time you first saw him, November 17, 1948?

A. I couldn't tell you definitely. I have forgotten those dates.

Q. At the time you examined him on November 17, 1948, what was your opinion at that time with respect to his ability to return to work?

A. Well, as I just said, I felt that the man could work, having a definite disability, but he could return to work and work would do more to decrease his disability than any other factor that could be done, and I would say when I saw the man in November that he was fit for duty.

Q. Oh, incidentally, Doctor, did you serve in the Medical Corps of the United States Navy during the last war?

A. I am still under it. I served four years. I happened to be a Captain in the Navy.

Q. You examined the man here the other day?

A. I did.

Q. And with respect to what you found on November 17, 1948, will you compare those findings with the findings that you ascertained here the other day?

A. Well, the other day I found that the man had certainly followed my advice in regard to using

(Testimony of Dr. Merrill C. Mensor.)

it, because when I [57] contrasted measurements of the circumference of the arm and forearm with the measurements on the first examination, the sizes of the muscles had definitely increased, showing the man had actually used his hand.

As regards the limitation of motion, there was no marked increase in motion, except there was no trouble in my examination yesterday in his bringing his fourth and fifth fingers to the palm. His middle finger still missed his palm by exactly the same as it was before. In other words, about one inch.

When he flexes, his grip was not materially increased. I would say the man has a permanent moderate loss of gripping strength in his right hand.

Q. Incidentally, Dr. Cox estimated that at 25 per cent—rather, he said it was 35 per cent—inasmuch as it was his major hand, he estimated his loss of grip at about 35 per cent.

A. I think that would be a fair estimate.

Q. What were the complaints he made to you on your last examination with respect to his hand?

A. The man had very few complaints in my examination of yesterday. He told me he returned to sea on March 2nd of 1949 with the rating of Boatswain, and he carried on successfully and did the job quite well. The only thing that bothered him was, particularly in cold weather, the stump ached and the [58] middle joint of the middle finger ached, that he still didn't feel that he had as good a grip in that hand as he had before the accident.

(Testimony of Dr. Merrill C. Mensor.)

Regarding the grip, I think that is quite true. Regarding the aching, I think we can explain that on the fact that it sometimes takes several years even before they lose some of these tender sensations they have. The circulation has to re-establish itself, and in extremes of temperature—sometimes the blood vessels haven't come back to normal and they don't give the full supply, and they get a little aching, particularly in cold weather.

Q. (By the Court): You expect that to improve?

A. I do, I expect that to improve. On the other hand, we find amputees that complain indefinitely they feel an aching in their stump in cold weather, and, of course, we find people with arthritis who say they can tell the change of weather from the way their joints feel, but the majority of medical experience indicates that that will improve.

Q. (By the Court): How about the grip? Do you think there will be any improvement in the grip?

A. No, I think that is permanent, your Honor. The man has used it over a year and a few months and it has been over a year since it was amputated. and I think the estimate that Dr. Cox gave of 35 per cent loss of grip is a fair estimate, and that it is permanent. [59]

Q. (By the Court): As I understood, you testified that after your first examination the work had decreased his disability?

A. I did. As a matter of fact, it decreased it,

(Testimony of Dr. Merrill C. Mensor.)

but there was no marked improvement in the grip as far as I could determine from the instrument, and I think the man was giving his best effort.

Q. (By the Court): You said something about the fourth and fifth fingers, he couldn't bring those to the palm of his hand?

A. On the first examination, no.

Q. (By the Court): Can he now?

A. Yes, he can, but his middle finger is not improved.

Q. (By the Court): There is that definite improvement?

A. Yes. In other words, the hand lumps up (demonstrating).

Q. (By the Court): Doesn't that improve the grip somewhat?

A. One would assume so, but there again we have a gripping machine, and I am assuming this man gave me his best effort, and I have no reason to believe he did not, so although the motion should improve so far as indications go, there was very little change, so I would assume there has been no material improvement in the grip, and since he has gone back to work using his hand the length of time he has since his amputation and the thing remains fairly stationary, I would feel—well, optimistically he might increase his gripping power five or ten per cent or more, but he will certainly have a variable [60] between 25 and 30 per cent loss of grip.

Q. (By Mr. Schaldach): Now, Dr. Mensor, with respect to this thing that is called a causalgia

(Testimony of Dr. Merrill C. Mensor.)

factor—Dr. Cox this morning in his testimony made some reference to that factor.

A. A causalgia factor?

Q. A causalgia factor.

A. A causalgia is a blood vessel and nerve pain. It is a definite reference pain. It is usually projected through the stump and down where the member was before it was amputated, and this man has no signs of a true causalgia. I think that his ache he has is along a blood vessel basis, but that is not a true causalgia.

Q. Doctor, when you examined this man the other day, did you ask him if he had been working?

A. Yes.

Q. And did he tell you he had been?

A. Yes, he told me he went back to sea March 2d, 1949, and the only difficulties he had were those I have given, and from his description to me, I assumed that he had been working and is working right up to now. He may be laying off a cruise on account of this litigation matter.

Mr. Gay: Pardon me, what is that?

The Court: The doctor said he assumed he had been working and is working right up to now.

Mr. Gay: I ask that be stricken. [61]

The Court: It may go out.

Q. (By Mr. Schaldach): Do Mensor, from your examination the other day is there any reason why this man cannot continue working?

A. None whatsoever. In fact, he could have worked, in my opinion, in November, 1948, when

(Testimony of Otto Clavel.)

I saw him.

Q. And, as you said, he has improved somewhat from the date of that examination?

A. That is right.

Q. Now, Dr. Mensor, assuming that a seaman aboard a vessel on March 5, 1948, had an infection of the finger, the index finger of his hand——

The Court: What date?

Mr. Schaldach: On March—on April the 25th, your Honor, I beg your pardon, I am getting the three and four mixed up—on April 25, 1948.

The Court: I believe his testimony was it was April 23, if you want to be accurate.

Mr. Schaldach: Well, your Honor, I am going to submit proof on my case to conform with my facts.

The Court: Very well.

Q. (By Mr. Schaldach): On April the 25th, 1948, a seaman aboard a vessel, a tanker, came to one of the mates who was the designated medical officer in charge of that vessel with an infection in one of the fingers of one of his hands, and at that time the mate prescribed hot Epsom Salt treatments, [62] there being no penicillin or sulfa aboard the vessel, and that thereafter on the following days, the 26th and 27th of April the same treatment was carried out, and on the 28th of April the infection came to a head and it was lanced, and hot Epsom Salts treatments were continued on that day and the following days up to May 3rd, when the vessel arrived at port, and the infection which was in

(Testimony of Otto Clavel.)

the finger of one of the hands was such that it became localized on the back of the hand and in the finger that was injured and some portion of the arm.

In your opinion, Doctor, in the absence of penicillin and sulfas aboard that vessel, would you say that that was the proper treatment afforded this man?

A. I would. I would say he did everything he could do.

Q. Now, Doctor, further assuming that you were attached to a hospital in—say one of the Naval Hospitals in Japan, and a vessel proceeding toward that port radioed the hospital at which you were the chief doctor, and upon the same state of facts asked your opinion on April the 28th, at the time they drained and dressed his hand as to what would be the course of treatment, what would your answer be?

Mr. Gay: Well, now, if your Honor please, I object to that. It is patently improper. In the first place it doesn't state the facts correctly as brought out and as the record must show, and it asks the doctor to assume if you were in Japan. Now, that is immaterial where they are. If the question [63] is proper at all, it is just a question of what is the proper medical treatment.

The Court: I think so. Of course, I will receive this and permit the doctor to give his answer to that upon the assumption that counsel will prove the facts which are the basis of the hypothesis. If he does not, it is subject to a motion to strike.

(Testimony of Dr. Merrill C. Mensor.)

Mr. Schaldach: Yes, your Honor, that is a basis on which it is offered.

The Court: Of course, the second objection is good, that it doesn't make any difference whether it was in Japan or wherever it was.

Q. (By Mr. Schaldach): Let's assume for the purpose of that hypothetical question he was in the immediate vicinity of land in a hospital and he received a radiogram from the vessel.

Mr. Gay: I think the form of the question is improper.

The Court: Overruled. With the qualification I have made my ruling on, what would be the treatment you would direct under those conditions?

Q. (By Mr. Schaldach): By return radio or wire.

A. I think with the facilities that are available aboard ship I would prescribe treatment such as was given. There was nothing else available under the circumstances.

The Court: You said under those conditions you would consider that treatment appropriate? [64]

A. That is right.

Q. (By Mr. Schaldach): Now, assume, Dr. Mensor, that on April the 25th, 1948, a seaman aboard a vessel approaching Japan in the China Sea reported to the Mate that he had an infection of his finger on the right hand and that he was afforded treatments of Epsom Salts and hot water treatment on the 26th, 27th, 28th, 29th, and 30th of April, and on March 1st, 2nd, and 3rd—on May 1st,

(Testimony of Dr. Merrill C. Mensor.)

2nd, and 3rd the hand was dressed and bathed with hot Epsom Salts, and during the period of time from April 25 to May 3rd, 1948, the man was given on one occasion—he was given on one occasion phenobarbitol, would that have any significance or mean anything to you?

A. Yes, it would mean to me that the general condition of the patient was such that I would not consider him seriously or dangerously ill, that he did not have a tremendous amount of pain, because phenobarbitol is a sedative, not a pain killer, and assuming they had pain killers aboard the ship I would assume further that the man in charge of the medical thought that the man had sufficient pain he would give him something for the pain.

Mr. Schaldach: And assuming the same set of facts, and assuming, Doctor, that he was given the phenobarbitol on two occasions, one on April 27 when his hand was lanced and the following day he was also given phenobarbitol, on those two [65] occasions and those two alone and not thereafter, would that have any significance to you?

A. Yes, that the man did not need either sedation or any medication for his pain. Otherwise I would assume, as I stated, if pain medication was available, if it was needed it would have been given.

Mr. Schaldach: That is all. You may cross-examine.

(Testimony of Dr. Merrill C. Mensor.)

Cross-Examination

By Mr. Gay:

Q. Doctor, you came here to testify as a professional witness, didn't you?

A. I came here to give the benefit of my opinion, because I had examined this patient at the request of Mr. Schaldach.

Q. All right, but you came here as a doctor?

A. That is right.

Q. All right, now, what right have you to assume from the mere statement to you that the man was only given phenobarbitol once that he wasn't in pain? Isn't it just as consistent to assume that he was in pain and that he was neglected?

Mr. Schaldach: Well, now, just a moment, your Honor, I will object to the question in that form as being argumentative.

The Court: Overruled.

A. Shall I answer?

The Court: Yes.

A. I would assume that a man who would have enough [66] intelligence to give a patient hot Epsom Salts and to incise an abscess when it was there, to see the man once or twice every day, would not be of such a character that he would neglect a patient.

Mr. Gay: I see. In other words, you are coming here to testify on behalf of the steamship company, and you are giving all of the assumptions in favor of the correctness of the treatment?

A. Mr. Gay, I am simply answering hypothetical questions to the best of my ability. I expect to be

(Testimony of Dr. Merrill C. Mensor.)

paid for my testimony just like your medical witnesses expect to be paid for theirs.

Q. I didn't ask you that.

A. If your Honor please, he is arguing with me, and if his Honor will rule one is argument, I will answer the question.

Q. Very well. You apparently do not require very much invitation before you express an opinion.

Mr. Schaldach: Well, now, your Honor, I will ask that go out.

The Court: It may go out.

Q. (By Mr. Gay): As a matter of fact, if the facts were that in the absence of morphine or barbitol that he was taking his own aspirin at his own room and using it himself in order to relieve the pain, if that is a fact would that modify your opinion any? [67]

A. If a man was taking aspirin to stop pain on his own, I would say that the man had pain certainly.

Q. Well, do you think that the factor of pain is important in determining the severity of injury?

A. I think pain is a very definite factor relative to severity.

Q. And if it is a fact that the man was suffering from severe pain to the extent that he could not sleep, then that would indicate to you that it was of some severity?

A. Yes.

Q. Now, Doctor, in Mr. Schaldach's question he asked you about infection and so on, and you said with the infection as he described it to you that the

(Testimony of Dr. Merrill C. Mensor.)

treatment was all right. If it were the fact that after the first day or two the finger—the index finger swelled up to twice its size and that the hand itself became puffed up, discolored, it was red and green and yellow, and also further assume that that swelling continued up into the forearm, wouldn't you think that that would indicate a serious condition that would need treatment?

A. I would think, if a man had all those things, we might even anticipate gangrene. I can't from my knowledge of what I gathered from examining this man and taking the history conceive that he had a lot of discoloration, red, yellow, and green as you describe it. I can visualize a medical patient that would have a cellulitis or would have swelling [68] of his hand somewhat generally, and it may even proceed somewhat up the forearm.

Q. I have asked you to assume, Doctor, that it was a fact that his hand was in the condition I have described. Now, if that were a fact——

A. I would say it was a serious condition.

Q. It would be a condition that you as a doctor would not think could properly be handled by merely soaking it in Epsom Salts; isn't that true?

A. Yes.

Q. And further, Doctor, in the question that was asked you, that was put to you, in the absence of penicillin or sulfa drugs whether the treatment given was proper—now, penicillin or sulfa drugs would have been a very good thing to have at that time, wouldn't it?

(Testimony of Dr. Merrill C. Mensor.)

Mr. Schaldach: Just a minute, your Honor, I will make an objection to this on the ground it is incompetent, irrelevant, and immaterial. It has been testified here that there was no penicillin or sulfa on that vessel, and with respect to that, your Honor, the case of Johnson vs. American President Lines sets down what the rule is in these cases, and it is what under the circumstances the Mate or Captain on the vessel did, and not what they didn't do.

The Court: Well, under the circumstances that covers quite a little territory, Mr. Schaldach. I think it is [69] appropriate to go into this. Under those conditions would penicillin have been something that should have been used, if it had been available?

A. I would say if it had been available they certainly should have been used, yes.

Q. (By the Court): And at that time, at the time of the accident, in April, 1948, how generally was penicillin used and how accessible was it?

A. Well, penicillin was not as widely used a year and a half or two years ago as it is now. It was quite available. Sulfa drugs, however, were very easily obtained. Penicillin, of course, had to be given by injection, which added a definite hazard.

Q. (By the Court): Well, in the absence of penicillin and sulfa drugs were available, would it have been appropriate to use sulfa drugs?

A. Yes, it would, your Honor.

Q. (By Mr. Gay): And assuming the hand was in the condition that I have described and that a

(Testimony of Dr. Merrill C. Mensor.)

Mate or Captain of a vessel did not feel competent to administer that sulfa, wouldn't it have been advisable to get the patient to someone who could administer those drugs? A. Is that a question?

Q. Well, never mind.

The Court: I think the answer is in the question. [70]

Q. (By Mr. Gay): Doctor, you stated that when you examined Mr. Clavel in March of 1950, which was only yesterday, by the way, he told you that the pain—that the hand, his right hand, the stump and the finger ached a little in cold weather. Now, as a matter of fact, didn't he tell you that it became very painful in cold weather?

A. No, he didn't. He told me exactly what I said, that it ached a little, and my memory is very vivid in twenty-four hours.

Q. Did you make any notes of what he told you?

A. I did.

Q. Do you have them on you?

A. I do in my office in the dictating machine, if you would like to come and listen to them.

Q. Didn't he tell you that his hand aches in cold weather, that he just can't endure it, can't work with it?

A. No, he didn't. He told me he carried on his duties as a Boatswain very successfully.

Q. Carried on his duties as a Boatswain very successfully. But in cold weather did he tell you that?

A. He told me he had no difficulty at sea with

(Testimony of Dr. Merrill C. Mensor.)

the hand, other than the symptoms that I described.

Q. Did he tell you he had been working in cold weather since——

A. Yes, he told me he had been at sea since March 2nd, 1949. That is in cold weather. [71]

Q. Did you assume that since March 2nd, 1949, when he went back to work to the present time that he has worked in cold weather? A. I did.

Q. You are assuming that?

A. That is right.

Redirect Examination

By Mr. Schaldach:

Q. Dr. Mensor, Mr. Gay has described to you the condition of a man's hand hypothetically as being swollen and the arm being swollen, and that the hand and the arm were red, blue, and some other color, I don't recall what the other color was, what kind of a condition would that be, Doctor, if the hand were red, blue, and green?

A. Well, as I said, it would suggest to me from that description that that hand might have become gangreneous.

Q. And assuming, Doctor, if that condition were such on April—or, rather, three days after the original prick of the finger and the man stayed aboard the vessel for a period of eight days, would you expect that he would have lost his hand or his arm if that condition had existed on that day nine days before the termination of the voyage?

(Testimony of Dr. Merrill C. Mensor.)

A. I would expect he might not be with us.
Mr. Schaldach: That is all.

Recross-Examination

By Mr. Gay:

Q. All right, Doctor, the testimony is and the [72] record will show that the Mate of the vessel cut Mr. Clavel's hand to let out the pus on the 27th day of April, 1948, which was about seven or eight days before he reached the hospital, and I am going to read you the testimony from the testimony of the Mate himself, Mr. Coward, which will be read in evidence, as follows—

Mr. Schaldach: Now, just a minute. Your Honor, I will object to any questions based upon questions asked of doctors based upon the testimony of what one of the Mates or someone else stated there. He can put it in the form of a hypothetical question, but not reading from the testimony.

The Court: Overruled. It will be understood that the hypothesis is based on the statement about to be read.

Q. (By Mr. Gay): All right. Assuming this is the testimony and assuming that it is true:

“When that drew to a head I cut it, I lanced it, that took the swelling out of his arm and got rid of all of that pus out of his hand, and on the back of his hand. His hand had started to turn green and yellow on here.”

Now, assuming that the Mate who treated him testified himself that it was green and yellow—

The Court: Assuming that is the fact.

(Testimony of Dr. Merrill C. Mensor.)

Q. (By Mr. Gay): Yes, and assuming that is the fact, do you wish your statement to Mr. Schaldach to stand that with a hand [73] of that color you are surprised that he is still with us?

A. My statement still stands. I think that due to the lack of technical medical knowledge that was a layman's description of how the thing looked.

Q. Yes. You were taking the—you were basing solely on the description of the hand as being green and yellow, and you said, did you not, that if the hand was in that condition at that time and he wasn't hospitalized for a week after that you are surprised he is still with us, did you not?

Mr. Schaldach: Just a minute. Your Honor, I added the further facts that the hand was swollen, that the finger was swollen, that the arm was swollen, that the arm and the hand was green, black, and blue.

The Witness: If you Honor please, for your edification, it is not a jury——

Mr. Gay: If the Court please——

The Court: If he wishes to amplify the answer, I will permit him.

The Witness: May I? I think my answer still remains unchanged to both questions, both Mr. Schaldach's and Mr. Gay's, because there is an assumption here by a non-medical person of how a thing looks, and they are asking me a medical opinion if that were actually true. Now, if that were actually true, it would be dangerous; but seeing

(Testimony of Dr. Merrill C. Mensor.)

non-medical descriptions of how things are, it is very much open to question. [74]

The Court: I understand you. Go ahead. Anything further?

Mr. Gay: I have nothing further.

Mr. Schaldach: Nothing further.

The Court: That will be all, Doctor. Now, the Libelant will resume the stand.

OTTO G. CLAVEL

the Libelant, resumed the witness stand.

Cross-Examination

(Continued)

By Mr. Schaldach:

Q. You said, Mr. Clavel, that when you went aboard the vessel on May the 7th after it left Japan, and prior to that time that the doctor at the Naval Hospital had given you a supply of sulfa——

A. Right.

Q. Is that correct? A. That is correct.

Q. And did he give it to you personally, or someone else?

A. He gave it to me personally.

Q. And were they in the form of tablets?

A. They were in the form of tablets.

Q. And he told you to take one a day?

A. No, I had to take four every four hours.

Q. Four every four hours? He gave you instructions to take four every four hours? [75]

A. Yes.

(Testimony of Otto G. Clavel.)

Q. Do you know whether or not the Doctor talked to either the Master or the Chief Mate?

A. No, he didn't talk to them.

Q. You don't recall that?

A. No, because none of them were ever in the hospital.

Q. Did you bring back any sulfa or instructions with you to give to the Captain or the Mate that you have received from the doctor?

A. Yes, I did. I gave the medical abstract to the wireless operator, because he was the clerk aboard the ship, and he told me he was going to give it back to me, but he never did.

Q. My question is this: Did you ever receive any instructions as to the care of that finger or your hand from the Navy Hospital which they told you to give that particular instruction or instructions to the Master or the Mate? A. No, I didn't.

Q. They told you themselves—that is, the Navy Doctors told you themselves what course you were to follow in the taking of the sulfa drugs?

A. That is right.

Q. Told you alone, no one else?

A. That is right.

Q. Did you tell the doctors there, or anyone in Japan connected with the Naval Hospital that you didn't want to stay [76] there, that you wanted to go back to the States on the Picos?

A. After the doctor told me he was going to cut my finger off.

Q. After he told you he was going to cut your finger off, then you took off?

(Testimony of Otto G. Clavel.)

A. I told him in that case I want to go home and try to save my finger.

Q. And you knew, didn't you, that you were taking a certain risk in going home with your hand in the condition it was?

A. That is right, but I asked the doctor how much risk I would take. He said, "If you take the sulfa drugs and ask them for penicillin, I am sure you will reach San Francisco or Pedro or the United States."

Q. You knew you were taking a risk, though, in doing that?

Mr. Gay: Asked and answered, if your Honor please.

The Court: Yes.

Q. (By Mr. Schaldach): Now, when you got to San Pedro, Mr. Coward asked you to go to the hospital down there, didn't he? A. Yes.

Q. When did the vessel get to San Pedro?

A. Saturday afternoon.

Q. Saturday afternoon?

A. Somewhere on Saturday afternoon.

Q. Do you recall what the date was? May the 20th, would that be the date? [77]

A. No, May the 22nd—no, let's see—the 25th I paid off.

Q. You paid off the 25th? A. 25th.

Q. Didn't you stay around San Pedro for three or four days? A. That is right.

Q. What is that?

(Testimony of Otto G. Clavel.)

A. That is right. We arrived Saturday. There is no hospital in San Pedro, only a little infirmary, so I couldn't go there Saturday, I couldn't go there Sunday, and Monday they fumigated the ship and I had left my slip aboard and I couldn't go back aboard the ship.

Q. They gave you a slip to go to the San Pedro Marine Hospital?

A. There is no San Pedro Marine Hospital, there is only an infirmary. They send you from there to Pasadena.

Q. They sent you from there, but you didn't go to the Marine Hospital there?

A. There is no Marine Hospital there.

Q. Did you go to the infirmary?

A. No, because we came in Friday, Saturday it was closed, Sunday it was closed, and Monday I couldn't go because they were fumigating the ship, so I couldn't get my slip, and Tuesday I paid off and decided to fly home so I would be with my family.

Q. Did you have any conversation with Mr. Coward, the Chief [78] Mate, about your finger after you arrived in San Pedro?

A. Yes, I did. I thanked him for what he did to my finger, he did the best he could, because he wasn't a doctor.

Q. In other words, you thanked Mr. Coward for what he did to your finger on board the ship?

Mr. Gay: He started to add to that the qualification that he not being a doctor——

(Testimony of Otto G. Clavel.)

Mr. Schaldach: Now, just a moment——

Mr. Gay: That is what the witness said.

Q. (By Mr. Schaldach): How long did you remain in the Marine Hospital in San Francisco the first time? A. Twenty-one days.

Q. When did you first go to the Marine Hospital?

A. The same day after I arrived I went up there, and they told me to be back the next day.

Q. They told you to be back the next day?

A. Next day.

Q. And you stayed in there twenty-one days?

A. Twenty-one days on penicillin treatment.

Q. Then you were on out-patient status for awhile?

A. I was out-patient status for thirty days for therapy, and my hand was stiff and I couldn't move my finger.

Q. Now, what was the date your finger was amputated?

A. It was, to the best of my recollection, the 14th or 15th of August. [79]

Q. August the 14th or 15th. And how long did you remain in the hospital then?

A. Three days.

Q. You were on out-patient status after that?

A. After that.

Q. You saw Dr. Wagner of the Marine Hospital after that?

A. Well, Dr. Wagner was too busy, I only saw his assistant.

Q. Well, you saw him on occasions, didn't you?

(Testimony of Otto G. Clavel.)

A. Well, I saw Dr. Wagner, but he was so busy that time they had to take the stitches out, they took them out in three sittings.

Q. When did the doctors at the Marine Hospital give you your fit-for-duty discharge slip?

A. After they took the stitches out.

Q. How long after?

A. Well, it say on the discharge slip, "Twenty-one days after fit-for-duty."

Q. You received a discharge slip, didn't you?

A. Yes.

Q. In October, 1948? A. Yes.

Q. Saying you were fit for duty October 1st, 1948?

A. Twenty-one days from that discharge.

Q. Yes. You received that? A. Yes. [80]

Q. You didn't go back to the Marine Hospital after that, did you? A. No.

Q. After you received your discharge and "fit-for-duty" slip, you didn't go back to the Marine Hospital after that for any treatment? A. No.

Q. That is right; isn't it? A. That is right.

Q. You didn't go to any other doctor for treatment after you left the Marine Hospital and received that "fit-for-duty" discharge slip; is that correct?

A. I didn't see any other doctors.

Q. That is what I mean, you didn't go to any other doctor for treatment? A. No.

Q. And you testified here, I think, that you went back to work on March the 3rd?

(Testimony of Otto G. Clavel.)

A. March 2nd.

Q. And you worked on that vessel, the Mission Dolores? A. Dolores.

Q. —for nine months, and you got off some-time in December?

A. Twenty-eighth of December.

Q. And the people that hired you are the same people who are defendants in this action, aren't they, the Pacific Tankers, [81] Division of Joshua Hendy Corporation? A. That is right.

Q. Mr. Clavel, do you have with you your pay voucher for the voyage aboard the Mission Dolores, the ten-month's period? A. Yes.

Q. May I see it, please? A. (Producing.)

Q. In other words, you made during the time—during the year 1949, the only employer you had was the Pacific Tankers, Division—

A. That is right.

Q. —of Joshua Hendy Corporation?

A. Yes.

Q. Did you work on two different vessels, Mr. Clavel?

A. No, they are just two different documents.

Q. They are two different documents. It shows that you earned \$4,158.25 from which there was deducted \$478.35 for withholding tax? A. Yes.

Q. And you made an additional \$629.10 from which was withheld \$72.00; is that right?

A. Yes.

Q. Did you injure your hand, or re-injure your hand on the Mission Dolores? A. No. [82]

(Testimony of Otto G. Clavel.)

Q. Nothing happened that you hurt your hand or your finger? A. No.

Q. At any time on this voyage on the Mission Dolores? A. Never did.

Q. Did you injure yourself in any way?

A. No, I never did.

Q. I mean, that would incapacitate you from working? A. No, I didn't.

Q. You say that you were fixing up these sail hooks to put this canvas over the poop deck where they would steer the vessel, because the steering engine was broke? A. Yes.

Q. In other words, the poop deck is the after part of the vessel; isn't it? A. That is right.

Q. And there is an auxiliary steering engine there, or steering apparatus? A. A wheel.

Q. A wheel? A. A steering wheel.

Q. The vessel is ordinarily operated from the bridge, which is on the forepart of the vessel and looks right over the bow; isn't that right?

A. Yes.

Q. Now, do you know whether or not they were operating this [83] vessel from the time the vessel came through Singapore until it arrived at Japan from the poop deck steering wheel or from the bridge?

A. I couldn't say if they operated it all the way into Japan, but they operated it for quite awhile.

Q. They used it for quite some time?

A. It might have been until they got to Japan, but they were operating the vessel through the

(Testimony of Otto G. Clavel.)

three or four days or five days after they left—after it came about Singapore and started up the China Sea from the poop deck.

Q. From the rear steering wheel?

A. Yes.

Redirect Examination

By Mr. Gay:

Q. Now, Mr. Clavel, the statement marked Respondent's Exhibit A that has been offered in evidence, statement signed by you, taken by Mr. Hall, I am going to read this and ask you to comment on one or two matters here——

Mr. Schaldach: I offered this for the purpose of impeachment only.

Mr. Gay: I don't care for what purpose, it is in evidence. You haven't read it, and I am going to.

Mr. Schaldach: Very well.

Mr. Gay: "I, Otto G. Clavel, sixty years of age, married, with no dependents,"——

Well, is your wife your dependent? [84]

A. Yes.

Q. You mean no other dependents other than your wife? A. No.

Q. Is that what you mean?

A. That is what I mean.

Q. "Residing at 8 Seymour Avenue, Mill Valley, California, after first being examined and found fit for duty, signed foreign articles as Boatswain at \$275.00 per month on February 10, 1948, at Oakland, California, on the U. S. N. T. Picos."

(Testimony of Otto G. Clavel.)

Now, you stated before your base pay was \$250.00 a month I believe?

A. Well, in the meantime we got a raise. I forgot about this raise. It was a \$25.00 raise.

Q. So it was \$275.00? A. 275.00.

Q. "On or about April 24, 1948, at about 10:00 a.m. while the vessel was at sea en route from the Persian Gulf to Japan, and while engaged at the direction of the Chief Officer in sewing canvas for an awning to protect the crew who were required to steer the vessel from aft, due to the fact that the steering wheel gear had broken down, I sustained a laceration of the forefinger of my right hand from the sharpened end of a nail which I had filed down to make a hook by means of which to suspend [85] the awning. This nail was one of several new ones which I had obtained from the carpenter and was without defects."

Now, your statement in the libel, in the pleadings, was that you were injured on April 22, and your statement in this statement was that you were injured on April 24, and your statement in court here has been that your injury was on April 23. Now, at the time that you made this statement to Mr. Hall, did you have any memorandum before you as to the exact date? A. No, I didn't.

Mr. Schaldach: If your Honor please, I will submit that this examination is attempting to support his own witness here——

The Court: He is attempting to reinstate him. Proceed.

(Testimony of Otto G. Clavel.)

Q. (By Mr. Gay): Did you have any memorandum, any notes?

A. No, I didn't have any memorandum.

Q. Did you have any calendar before you at the time? A. No, not at the time.

Q. Well, now, you have testified here that the injury you are now quite sure was Friday, April 23, 1948, and how did you arrive at that date?

The Court: You went into that. He looked at the calendar.

Mr. Gay: All right.

Q. (Continuing with the statement): "Without reporting this incident to anyone, I washed the finger and looked [86] around for a band-aid, but as I was unable to find one, I continued my duties and finished the job of sewing the canvas in question."

Now, you testified in court here this morning that you did have a band-aid, but the statement in here is to the effect you were unable to find one. Will you explain to his Honor what the circumstances were?

A. I couldn't find any band-aids in the hospital, so I went to my own room and I had a few band-aids left of my own, and I put those on.

Q. How long were the band-aids you had?

A. They were small ones.

Q. How many did you have to put on there?

A. Two.

Q. So you did put band-aids on?

A. I put my own band-aids on.

Q. It is also true that you looked around for a band-aid and were unable to find one?

(Testimony of Otto G. Clavel.)

A. There was none aboard the ship.

Q. In the hospital?

A. In the hospital.

Q. "My finger seemed to be in satisfactory condition for a period of about three days, but at the end of that period it began to swell."

Is that correct? [87]

A. No, that is not correct, because the second day my finger—I remember it very well, because I told the Mate in the afternoon, "I can't work the overtime, my finger hurts me too much." That was the second day after that happened.

He says, "Well, if you don't get any better, come back tomorrow morning and tell me tomorrow morning. It might get better overnight."

Q. And you did go to him on the third day?

A. Yes, then I reported to him after reporting to the Captain.

Q. "I attribute this solely to the finger's having come in contact with the green coating which was on the canvas. This green coating is some sort of protective chemical to preserve the fabric. This canvas was Navy war time material. It was taken on board the vessel at Oakland prior to sailing on the voyage in question.

"When my finger began to swell, I reported to the Chief Officer who was in charge of the medicine chest. After examining the finger, he instructed me to bathe it in Epsom Salts solution. I knocked off all duty in order to better take care of my finger. It continued to swell, and the Mate decided to lance it,

(Testimony of Otto G. Clavel.)

which he did. This lancing produced no effect except to the effect of draining some of the pus from the finger. I continued to bathe the finger in Epsom Salts solution, [88] but there was no improvement. In fact, prior to the vessel's arrival in Japan, the finger began to crook inward toward the palm.

“Upon arrival of the vessel at Yokosuka, Japan, the Mate took me to the Naval Hospital, where I was confined for a period of about three and one-half days. The doctor at the hospital wanted to cut my finger off, but I refused to give my permission. I was sent back to the vessel and completed the voyage. On the return voyage there was not much improvement in my finger. I was not required to turn to, but I voluntarily did so in a supervisory capacity as Boatswain, and I performed no work requiring the use of my right hand. I continued to bathe the finger in Epsom Salts solution until the vessel ran out of salts, after which I used ordinary salt water.

“On May 24, 1948, I paid off the vessel with the remainder of the crew at San Pedro, California, receiving all money due me. I signed off the articles under protest because of the condition of my finger, which, by that time, had assumed a right angle crook.

“On May 28, 1948, I reported to the San Francisco Marine Hospital, where I was confined to June 18, 1948, my discharge of that date indicating ‘improved—discharged—not fit for duty—return daily to P.T.’ [89]

“Incidentally, while serving as Boatswain on the

(Testimony of Otto G. Clavel.)

S.S. Mission San Fernando during March, 1946, and while tying up the ship I was hit in the head by the ball of a heaving line which was being thrown to the dock at San Pedro, California. During that voyage I suffered also from a slight deafness of the left ear. I sought no medical attention for the head blow or the ear condition, and I have at no time since my service on that vessel suffered any ill effects from either condition.

“I have read the foregoing, which is true, correct, and complete in all particulars. Dated: San Francisco, California, June 22, 1948. Signed: Otto George Clavel; Witness: R. H. Hall.”

Now, at the time you signed that on June 22, 1948, had you talked to me or any other lawyer?

A. No.

Q. And with respect to that injury on the Mission San Fernando, did you ever make any claim or get anything for that?

Mr. Schaldach: Objected to as incompetent, irrelevant, and immaterial.

The Court: Sustained.

Q. (By Mr. Gay): Mr. Clavel, what was the weather at the time from, say, the 23rd to the 28th of April while the vessel was proceeding along its course? [90]

A. It was good.

Q. Was the sea smooth?

A. It was pretty smooth, yes.

Q. You heard the testimony of Dr. Menser that when you saw him yesterday you told him that your

(Testimony of Otto G. Clavel.)

finger in cold weather ached a little bit. Is that what you told him?

A. No, I told him the finger aches me so much in cold weather that I am not able to work properly.

Q. And is that true? A. That is true.

Mr. Gay: That is all.

Recross-Examination

Mr. Schaldach: I have a few more questions, your Honor. Take the recess?

The Court: Go ahead and finish.

Mr. Schaldach: All right.

Q. Mr. Clavel, on June 22nd of 1948 when you gave this statement to Mr. Hall of our office, didn't he ask you what complaints you had regarding the condition of your finger against the vessel or its operators?

A. Well, Mr. Hall offered me a settlement, and I said, "I can't accept the settlement now."

Mr. Schaldach: That is not responsive to the question. I ask that it be stricken.

The Court: It will go out. [91]

Q. (By Mr. Schaldach): Didn't you tell Mr. Hall on June 22nd, 1948, each and every complaint that you had against the vessel or its operators by reason of the fact that your finger was in this crooked condition?

A. I don't understand that question.

Q. Well, I will reframe it. When Mr. Hall talked to you in June of 1948, and when he took the statement from you, didn't he ask you what

(Testimony of Otto G. Clavel.)

complaints you had against the vessel, and asked you to enumerate everything that was wrong with the vessel or its crew or the officers of that vessel that might have caused your finger to become in a crooked condition?

Mr. Gay: If your Honor please, I am going to object to that. The complaint is on file here in the libel and he has testified to it. Whether he told them everything he could think of or not is immaterial.

The Court: What was the question?

(Question read.)

The Court: What did he ask you, what did Mr. Hall ask you? Did he ask you to enumerate all the complaints you had against the vessel on account of your finger being injured, in connection with the injury to your finger? Did he ask you to tell all the complaints you had against the vessel and the crew?

A. He asked me what complaints I had.

Q. He asked you to tell what complaints you had? [92]

A. He asked me to tell what I had against the vessel.

Q. (By Mr. Schaldach): And what you told him he put down here in the statement, didn't he?

A. No, he didn't put this down what I told him.

Q. Oh, did you tell him, Mr. Clavel, did you tell Mr. Hall that you had complained against the vessel because they didn't turn the vessel back

(Testimony of Otto G. Clavel.)

and go to Manila because of the condition of your hand on the 27th, 28th, and 29th of April? Did you tell Mr. Hall that? A. No.

Q. You never told him that. Did you ever tell him that the condition of your hand was such because the Captain or the Chief Mate did not radio some hospital asking for advice about your hand? Did you tell Mr. Hall that? A. No.

Q. Never told him that.

A. But I told him other things.

Q. You told him other things, but you didn't tell him either one of those two things, did you?

A. No, I didn't.

Q. Did you ever tell Mr. Hall when this statement was taken that you asked the Captain every day that you were on the vessel after you got your infection to turn the vessel back and go to some port so you could see a doctor or go to a hospital? Did you ever tell Mr. Hall that? [93]

A. I didn't tell Mr. Hall, because Mr. Hall didn't ask me.

Q. He asked you to tell all the complaints you had, didn't he? A. I told him.

Q. You told him, but you didn't tell him that, did you? A. No.

Mr. Schaldach: That is all.

Redirect Examination

By Mr. Gay:

Q. Mr. Clavel, did Mr. Hall ask you whether you thought you had gotten the proper treatment on the vessel?

(Testimony of Otto G. Clavel.)

A. No, I told him no, I didn't get the right kind of treatment.

Q. You told him that, did you? A. Yes.

Mr. Gay: All right.

The Court: That is all.

Mr. Schaldach: Your Honor please, I know Mr. Gay has not rested as yet, but I have present a witness who was the Second Mate aboard this vessel, who is now a student at San Jose State and is taking final examinations in the morning and his wife is going to have a child today or tomorrow——

The Court: Well, I think counsel is as sympathetic as the Court is for a man in those circumstances. Put him on.

Mr. Schaldach: It will be understood, your Honor, he is here out of order. [94]

CHARLES FRANKLIN GARDNER, JR.
called for the Respondents, out of order, sworn.

Direct Examination

By Mr. Schaldach:

Q. What is your full name, sir?

A. Charles Franklin Gardner, Jr.

Q. And how old are you?

A. Twenty-three.

Q. Do you hold licenses?

A. Second Mate License unlimited.

Q. Second Mate License?

A. Second Mate License unlimited.

Q. In other words, how long have you been

(Testimony of Charles Franklin Gardner, Jr.)

going to sea—strike that. Were you the Second Mate aboard the “S.S. Picos”?

A. Yes, I was.

Q. That is a tanker?

A. Yes.

Q. Prior to that time, how long had you been going to sea?

A. Prior to the time I joined the “Picos” I had been going to sea four and a half or five years.

Q. Four and a half or five years, and I assume in the course of the years you got your Third Mate and then the Second Mate license?

A. Second Mate license January 1st, 1947.

Q. Now, while you were aboard that vessel, the “Picos”—where did that voyage start? [95]

A. The voyage started at Moore’s Shipyard at Oakland.

Q. I will strike that. Do you recall one of the voyages—strike that. How many voyages were you on on the “Picos”?

A. I don’t recall off hand. I was on the vessel a year. I joined the vessel on the 18th day of January, 1948, and left it on the 9th day of July, 1949.

Q. You were on her for two or three voyages?

A. Four voyages, but one was a small voyage.

Q. Do you recall one of those voyages on which Mr. Clavel was present?

A. Yes, that is the first voyage.

Q. That is the one that started in January, 1948?

A. Yes, sir.

Q. And that voyage started from San Francisco, or Moore’s Shipyard, wherever it was?

A. Yes.

(Testimony of Charles Franklin Gardner, Jr.)

Q. And finally arrived, I guess, at the Persian Gulf, right after leaving Yokosuka you went to the Persian Gulf and then you were on a return trip to Yokosuka? A. Yes, sir, that is right.

Q. Do you recall an incident aboard that vessel on the return voyage from the Persian Gulf to Japan when Mr. Clavel, the Boatswain, had an infected finger? A. Yes, I do.

Q. And do you know anything about the happening of the [96] accident, how he happened to do it?

A. I didn't see the accident myself. I only know from hearsay.

Q. Who was the medical officer aboard the vessel? A. The Chief Officer, Mr. Coward.

Q. Mr. Coward. And do you know how long—how old was Mr. Coward then?

A. I believe Mr. Coward was forty-one years old.

Q. As the medical officer aboard the vessel, just generally speaking, what were his duties, do you know?

A. Well, he took care of any of the fellows who were in need of medical assistance, such as cuts and bruises, venereal diseases, and just anything that came up.

Q. Now, when that voyage started, do you know of your own knowledge whether there were—strike that. Do you know whether or not that vessel contained or had a medicine chest or medicine cabinet aboard? A. Yes.

Q. And do you know of your own knowledge what

(Testimony of Charles Franklin Gardner, Jr.)
was in the medicine chest or medicine cabinet with respect to gauzes, tapes, ointments, or anything of that nature?

Mr. Gay: Wait a minute. I will object to that as no foundation laid.

The Court: Overruled.

Q. (By Mr. Schaldach): I mean of your own personal knowledge. [97] I am talking about the start of the voyage.

A. I checked the supplies aboard the ship.

Q. You did what? You checked them aboard the ship? A. Yes, into the hospital.

Q. And you checked the supplies from the ship into the hospital. A. Yes, in the ship.

Q. Just tell me to the best of your recollection what those medical supplies were.

A. They were a little of everything, from vitamin pills to bedpans.

Q. Was the vessel supplied with penicillin?

A. We did have a quantity of penicillin at the beginning of the voyage.

Q. Did you have any sulfa?

A. Yes, we had sulfa.

Q. Did you have any bandages? A. Yes.

Q. Gauze? A. Gauze, yes.

Q. Tape? A. Yes, tape.

Q. And any type of ointment?

A. Yes, there was Mercury ointment and Ichthymol and God knows how many other types, for various things. [98]

(Testimony of Charles Franklin Gardner, Jr.)

Q. Do you recall the incident of the Mate treating Mr. Clavel?

A. Yes, sometime after the accident occurred.

Q. And do you recall whether there was any penicillin or sulfa aboard the vessel at that time?

A. I am not really certain whether there was any penicillin there at the time. I think we did have some.

Mr. Gay: Well, wait a minute. Object to that, if your Honor please, what he thinks. I think he has already shown that he does not know.

The Court: Overruled. It is your best recollection that there was some there?

A. It is my best recollection, yes.

Q. (By Mr. Schaldach): I see. And do you know whether or not there were—any of the members of the crew during the course of that voyage were being treated for venereal diseases?

A. Several of them were.

Q. What treatment did they use for venereal disease aboard this vessel?

A. Penicillin when you have it, and sulfa when you don't, and sometimes one or the other. It depends.

Q. Do you know whether—did Mr Clavel ever talk to you about penicillin or sulfa aboard that vessel during the last part of the voyage when you were going into Japan?

A. I don't recall. [99]

Q. When the vessel was in foreign waters, especially in Japan, do you have any experience there

(Testimony of Charles Franklin Gardner, Jr.)
of getting medical drugs or ointments, or anything
of that nature from the Navy?

Mr. Gay: If your Honor please, I am going
to object to this on the ground that the witness is
not the medical officer, and there is no foundation
laid to show that he was the one to procure it.

Mr. Schaldach: All right, Mr. Gay, I will with-
draw the question.

Q. Mr. Gardner, you were not the medical officer
on that vessel, the Chief Mate was?

A. That is right.

Q. And, as such, he had charge of the hospital
and all the medical supplies? A. That is right.

Q. And if there were penicillin or sulfa or any
of these other things, he would be the one to know?

A. He would be the one to know.

Q. And not you, is that correct?

A. That is correct.

Q. Would you have occasion to treat anyone,
or go to the medicine cabinet for any of those
things? A. I have at various times, yes.

Q. Did you do it in the case of Mr. Clavel?

A. I did not. [100]

Q. Do you know whether or not during the
course of that voyage there was a medical log
aboard that vessel?

A. Yes, there is always a medical log kept—we
kept a medical log at all times.

Q. You kept a medical log at all times?

A. That is right.

Q. And do you recall after the voyage upon
which Mr. Clavel had an infected finger whether

(Testimony of Charles Franklin Gardner, Jr.)

or not Mr. Taylor from my office came down to the "Picos" and talked to you concerning the medical log? A. He did.

Q. And do you recall where that was?

A. In the hospital.

Q. In the hospital?

A. In the vessel's hospital.

Q. In the vessel's hospital, and where is that located?

A. That is located on the after port corner of the midship house.

Q. The after port corner of the midship house?

A. Yes.

Q. And do you recall approximately the month or the year that Mr. Taylor came down there?

A. It must have been in September of 1948.

Q. September of 1948? A. Yes, sir. [101]

Q. And where was the vessel at that time?

A. We were in Moore's dry dock.

Q. And that is over in—— A. Oakland.

Q. —Oakland. And did Mr. Taylor ask questions of you concerning the happening of this accident at that time? A. Yes, he did.

Q. Now, did he also—will you state whether or not Mr. Taylor examined the medical log?

A. Yes, we went over that together.

Q. Will you state whether or not Mr. Taylor made any notes from the medical log?

A. Yes, he did.

Q. Did you allow him to take the medical log—

(Testimony of Charles Franklin Gardner, Jr.)
strike that. Did Mr. Taylor ask you to allow him to take the medical log with him?

A. I don't recall; he may have; but that is not supposed to be removed from the ship.

Q. Is the medical log ever removed from the ship? A. Not ordinarily.

Q. However, Mr. Taylor didn't take the medical log with him? A. No.

Q. While you were aboard the vessel there on this particular voyage which started in January, 1948, from the time the vessel left Singapore to the time it arrived in Yokosuka, Japan, [102] and operated on this course which Captain Garner charted from April 24th to May 3rd 1948, did you ever hear Mr. Clavel ask either the Captain or the Chief Mate, either Captain Johnson or Mr. Coward, the Chief Mate of the "Picos," to take the vessel into Manila or to radio for any medical treatment or advice regarding his condition?

A. I did not. That would not concern me at all.

Q. That would not concern you? A. No.

Q. During the period of time from April 24th to the time the vessel arrived at Yokosuka, did you see Mr. Clavel about the ship?

A. Yes, I did.

Q. How often would you see him, if you have any recollection, during that period of time?

A. Oh, nearly every day.

Q. Did he have any bandage on his hands, or other portions of his body?

A. Yes, I was present at several of the times when the officer was treating his finger.

(Testimony of Charles Franklin Gardner, Jr.)

Q. And what did the Chief Officer do in the way of treatment that you noticed or saw at the time?

A. Well, he removed the dead skin from around the wound, and he used, I believe, Ichthymol ointment on it. I don't recall exactly everything he did. I didn't pay much attention. [103]

Q. But you did see the Medical Officer treating him on various occasions during the time from the time the vessel left Singapore until it arrived at Yokosuka?

A. Well, between——

Q. Between those times. Now, during those times that you observed the Chief Officer changing these bandages, or putting the ointment on, whichever he was doing, did you ever hear Mr. Clavel ask the medical officer to radio for medical advice?

A. No, I didn't.

Mr. Gay: There is no testimony he ever asked the Chief Officer to radio for medical advice.

Q. (By Mr. Schaldach): Did you ever ask or did you ever hear at any time that you saw the Chief Mate changing the bandage or putting ointment on it, did you ever hear Mr. Clavel ask him to request the master to radio for medical advice?

A. No, I didn't.

Q. And during those times that you saw this treatment afforded by the medical officer, the Chief Mate, did you ever hear Mr. Clavel ask the Chief Mate to request the Captain to turn the ship back to Manila?

A. No, I did not.

Mr. Schaldach: You may examine. [104]

(Testimony of Charles Franklin Gardner, Jr.)

Cross-Examination

By Mr. Gay:

Q. What watch were you on, Mr. Gardner?

A. Twelve to Four watch.

Q. Huh?

A. Midnight to 4:00 a.m., noon to 4:00 p.m.

Q. As second officer of the vessel, in general what are your duties?

A. At sea my duties are to stand my watch, to take morning sights, carry on navigation in connection with the Master, and in port to load and discharge the ship.

Q. Yes. You were the navigation officer, were you not? A. Yes, sir.

Q. And you had no direct control or association with Mr. Clavel, did you? A. No, I didn't.

Q. He was the Boatswain of the vessel, wasn't he? A. Yes.

Q. And the Chief Mate of the vessel is the one who takes care of the general upkeep of the vessel, isn't he? A. That is right.

Q. And the Boatswain works with the Chief Mate? A. That is right.

Q. The Chief Mate gives him instructions what to do, and the Boatswain will carry out the orders on deck in taking care of the ship's work; is that right? [105] A. Yes, sir.

Q. And you, when you are on duty you are up on the bridge a great deal, aren't you?

A. At sea, yes.

(Testimony of Charles Franklin Gardner, Jr.)

Q. Yes, at sea. So that from 12:00 to 4:00 during the daytime you would be up on the bridge taking care of the navigation most of the time?

A. That is right.

Q. And, of course, from 12:00 to 4:00 at night time, Mr. Clavel and the rest of the crew who are off watch are sleeping?

A. That is right.

Q. —in their rooms. So you really came in contact with Mr. Clavel very, very little, didn't you?

A. No direct contact in the way of work, no, just seeing him about aboard the vessel. The ship is a small place.

Q. Now, you say that you checked the medical supplies on board. At the beginning of the voyage?

A. At the beginning of the voyage.

Q. In San Francisco?

A. In Oakland.

Q. All right, in Oakland. And did you check on penicillin?

A. I did.

Q. Would there be a record with the ship's company of the amount of penicillin that was taken on?

A. There should be. [106]

Mr. Gay: I demand the production of those records, if you please, Mr. Schaldach.

Q. How about sulfa drugs? Did you have any sulfa drugs?

A. We had sulfa.

Q. How much penicillin did you have?

A. I don't recall off hand, but there was quite a number—they came in small bottles.

Q. Yes. Do you know how many there were?

A. No, not right off hand.

Q. How did the sulfa drugs come?

(Testimony of Charles Franklin Gardner, Jr.)

A. They are tablets about the size of your thumb nail.

Q. Do you remember how many of those there were?

A. No. They come in bottles of a thousand usually.

Q. You can't say how much there was, but you just know there was some taken on board?

A. That is right.

Q. Do you know when the supplies gave out, or did they give out of your own knowledge?

A. I don't know whether they did.

Q. You don't know whether they did, or you don't know they did?

A. I don't know that they did give out.

Q. Then, so far as you know they actually had penicillin and sulfa drugs on board at the time Mr. Clavel's finger was being treated? [107]

A. At the time I don't know exactly if they had penicillin, because several of the members of the crew were treated for venereal disease throughout the voyage with penicillin.

Q. Do you know whether they had any sulfa drugs at the time Mr. Clavel was being treated?

A. At that particular time I do not.

Q. Did the Mate ever tell you, or give you any reason why he didn't give Mr. Clavel penicillin or sulfa drugs?

A. He never discussed with me the treatment of Mr. Clavel at all.

Q. You know something about medical treat-

(Testimony of Charles Franklin Gardner, Jr.)

ment—well, I will strike that, that is argumentative. What was the last time on that voyage prior to Mr. Clavel's injury that you checked the medicine chest?

A. I don't recall when inventory was taken on that. Inventory would be taken just prior to requisition, but I don't remember exactly when that would be taken.

Q. When would the requisitions be made?

A. Well, prior to entering port. Either——

Q. You went first to Yokohama, did you, from the United States you went to where?

A. We went from San Pedro to Pearl Harbor.

Q. All right, from Pearl Harbor, where?

A. To Yokosuka.

Q. Did you have anything to do with making up a requisition [108] on arrival of the vessel at Yokosuka to get any more medical supplies there?

A. No, I didn't.

Q. Do you know whether any requisition was made? A. No, I don't.

Q. Would that be a matter of the ship's record? Would there be records on the ship?

A. They might still be there, yes.

Mr. Gay: I demand the production of those records.

Q. Now, the medical log after a certain time is turned in to the company, isn't it?

A. Not to my knowledge.

Q. I don't mean this by way of argument, but they don't leave the medical log on there for five

(Testimony of Charles Franklin Gardner, Jr.)
years, do they? Something is done with it. What is usually done with the medical log?

A. Well, it is kept with the rest of the log books.

Q. Well, those log books are turned into the company, aren't they?

The Court: They are kept on the ship?

A. There is always a copy of every log kept on the ship.

Q. (By Mr. Gay): For how many voyages do you keep them on board, is my point.

A. I don't really know how long they keep them. They keep them indefinitely, as far as I know, one copy. [109]

Q. You don't know whether the Captain or the Mate or anyone else did anything about getting penicillin or sulfa drugs when the vessel first touched at Yokosuka?

A. Not when they first touched, but when we first ran out of penicillin they made an attempt to get more penicillin.

Q. Where? A. In Japan.

Q. Who made the attempt?

A. Either the Master or the Mate. If the Mate made the attempt, he made it through the Master.

Q. As a matter of fact, they got more penicillin when the ship got back to Yokosuka, didn't they?

A. They may have. We had venereal disease on the ship and they were using——

Q. So they got a new supply before the ship came back to the United States, didn't they?

A. Yes.

(Testimony of Charles Franklin Gardner, Jr.)

Q. So there was penicillin and sulfa drugs available in Japan. Now, do you know what facilities there are at the other end of the leg (indicating on blackboard)——

A. Bahrein Gulf.

Q. Bahrein Gulf. Do you know whether they have medical supplies?

A. They do have medical supplies, but they don't part with them very easily. [110]

The Court: Well, I understood you to say as part of your cross-examination that either the Mate or the Mate through the Master attempted to get penicillin during the voyage some place when they ran out.

A. That was in Japan.

Q. Now, did they get it, or not; or do you know?

A. Yes, they got penicillin before we started home, because several of the fellows were being treated at that time for syphilis.

Q. You mean on the return trip from Japan to the United States you know men were being treated with penicillin?

A. That is right.

Q. (By Mr. Gay): You don't know whether any attempt was made to get penicillin or sulfa drugs at Bahrein on the first voyage from Yokosuka to the Persian Gulf?

A. I think at that time we still had penicillin left. You see, that was our first trip. Up until the time we arrived at Japan the first time, there was no need for any penicillin, none was used. It was after we left Japan the first time they first started using penicillin.

Q. In other words, when the vessel first touched Japan some of the men came back with venereal

(Testimony of Charles Franklin Gardner, Jr.)
disease and so forth? A. That is right.

Q. On the voyage from Japan to Yokosuka and back to Yokosuka at some time there they ran [111] out—— A. Of penicillin, yes.

Q. How about sulfa drugs?

A. I am not certain. I think they may have had sulfa at the time, because the men were being treated all the time for venereal disease. The baker was being treated for the entire round trip.

Q. Now, you have had the same medical training that the Mate would have to get in order to get his ticket? You have training along those lines?

A. Yes, but not the extent—not the experience.

Q. You have had the training, but not the experience? A. Right.

Q. But it is well recognized at sea it was at that time that sulfa drugs and penicillin would be used for inspections, is that right?

Mr. Schaldach: Your Honor, if he knows, all right. If he doesn't——

The Court: Yes.

A. Yes, they are used for inspections.

The Court: Any redirect?

Mr. Schaldach: No, your Honor.

The Court: That is all.

Mr. Gay: I think we all join in wishing the witness good luck.

Now, if your Honor please, I want to read portions of—— [112]

The Court: I wonder if we could finish the taking of testimony today so we won't have to keep

any of these witnesses here or require them to come back tomorrow, and then the matter of the depositions may be considered, any portions you wish to call to my attention you may point out to me.

Mr. Schaldach: Your Honor, I think——

Mr. Gay: It is all right. I have no further witnesses.

The Court: Well, the depositions have already been received in evidence, and if there is no objection they will be considered as having been read.

Mr. Schaldach: Well, your Honor, I want to make that stipulation with Mr. Gay to have them—they are introduced into evidence, and if your Honor reads them—I don't know whether your Honor wants us to read them——

The Court: Well, I intended to read them, but I thought possibly you might in a memorandum call my attention to important matters in those depositions so in reading them I won't overlook the points you deem important. I just want to save these witnesses coming back, if possible.

Mr. Schaldach: Well, I have Mr. Taylor and the Captain here, but it will take—I think it will take some time, your Honor.

The Court: How long? Over an hour?

Mr. Schaldach: No, no, not over an hour.

The Court: Well, let's go ahead and put them on then. [113]

Mr. Schaldach: All right.

ROBERT C. TAYLOR

called for the Respondents; sworn.

Direct Examination

By Mr. Schaldach:

Q. Mr. Taylor, you are an attorney-at-law?

A. Yes.

Q. And you are employed by Mr. John Black?

A. I am.

Q. Did you visit the vessel, the tanker "Picos," sometime in 1948?

A. Yes, I did.

Q. And did you see Mr. Gardner aboard that vessel at that time?

A. Yes, I talked to him at that time.

Q. And at that time did you examine the medical log aboard that vessel?

A. Yes, I did.

Q. And will you state where you talked to Mr. Gardner and where you examined the medical log aboard that vessel?

A. I talked to Mr. Gardner in his own quarters aboard the vessel, and he then took me to the ship's hospital, which was in the after portion of the ship, and together we examined the medical log which was kept in the hospital.

Q. Did you request anyone aboard that vessel to take that [114] medical log ashore?

A. Yes, I asked Mr. Gardner if I could take it with me, but he said it was required it be kept aboard the vessel. I copied the entries on it.

Q. In regard to what matter?

A. In regard to the treatment of Otto Clavel.

(Testimony of Robert C. Taylor.)

Q. Will you describe this medical log?

A. Yes. It was a paper bound book about the size of a typewriter sheet of paper, 8½ by 11, and covered with brown paper covers, and it is my recollection it was very similar to the type of composition book that is used in grammar school and high school. It had lined pages.

Q. And what was contained in there?

A. The records of the medical treatment that had been afforded various crew members throughout this voyage, and I believe preceding voyages. I know it was quite extensive and I went through it until I came to the dates under which Clavel had been treated, and then, of course, followed the details of that treatment throughout its course.

Q. Now, since that time in 1948 have you been aboard the "Picos" recently in an attempt to find that book?

A. Yes, I have. I have been aboard it twice, yesterday and the day before.

Q. Did you talk to someone down there regarding it?

A. Yes, I talked to Captain McGee, who is now the officer [115] in charge of the vessel, and also to the Second Mate, Mr. McDonald, who is acting in charge during the Captain's absence, and I also talked to Mr. George Clark, the Superintendent of Claims of Pacific Tankers, in an effort to locate this book, as well as Captain Dugan, who was on the ship, I believe, on the voyage which left in Septem-

(Testimony of Robert C. Taylor.)

ber of 1948 and came back to the States in June of 1949.

Q. I see. Did Captain Dugan advise you anything concerning this book?

A. Yes, he did. Captain Dugan told me that he remembered having seen the book and that it was kept in the right hand drawer of the dresser in the Captain's bedroom. He said that he noticed it particularly because it related principally to medical treatment which had been afforded crew members prior to the time he took over the vessel, which was in the fall of 1948. He said that they were then keeping a separate medical log and that he had no further use for this one so that he left it exactly where it was. He said it remained there throughout the time he was in charge of the vessel, and so far as he knew was still aboard the vessel when he left her in July, 1949.

Q. In accordance with the conversation you had with him, did you go aboard the vessel in an attempt to locate the log?

A. I then went aboard the vessel and looked where he told me to look, and in addition to that I looked through every [116] drawer and file cabinet in the Captain's quarters, in the office and in the ship's office, and also through all the drawers and filing cabinets in the ship's radio room. I might say, Mr. Schaldach, that the vessel is presently undergoing preparatory repairs for being placed in lay-up, so that a lot of material has been removed from the vessel. But I searched everything that was there in an effort to locate the log.

(Testimony of Robert C. Taylor.)

Q. Did you also contact the officer of Pacific Tankers, Mr. Clark?

A. Yes, I did, and I inquired from him of what the possibilities might be of the log having been turned in to him, and he said had it been turned in to him it would be kept in the files together with the files of the "Picos." I went through that file with him item by item, and there was no log book there. And then on the off chance it might be misfiled in the packages for some other vessel, we went through every file they had; that is, every log book file for all the vessels, and could not find this particular one.

Q. And now you said that at the time you talked to Mr. Gardner in 1948 you made notes of the entries regarding Clavel?

A. Yes, I did.

Q. And I will show you two pieces of legal yellow paper and ask you if that is your handwriting?

A. Yes, it is.

Q. And I will ask you if that contains the interview with [117] Mr. Gardner and also contains the notations from the medical log concerning Mr. Otto Clavel?

A. Yes, it does.

Q. Will you read, Mr. Taylor, the entries that you have there—strike that. Are the entries that you have there on these pieces of paper regarding the entries in the medical book which you examined in 1948—were they copied by you word for word from that particular medical log?

A. Yes, I made a verbatim copy of the entries

(Testimony of Robert C. Taylor.)

in the medical log for the period of Mr. Clavel's treatment.

Q. Will you read what you have put down there on that yellow piece of paper as taken from the medical log?

Mr. Gay: Well, just a moment. I will object to that. If it is admissible at all, the paper itself should be offered in evidence.

Mr. Schaldach: We are going to offer it in evidence.

Mr. Gay: Well, then, why don't you offer it in evidence?

The Court: You have no objection to its admissibility, have you?

Mr. Gay: I have no objection. I simply want to inquire of the witness whether there is any possibility that he overlooked any entries?

A. No, Mr. Gay, I don't think there is.

Q. (By Mr. Gay): In your honest opinion, that is a complete copy of the medical log of everything that relates to Mr. [118] Clavel? A. It is.

Mr. Gay: Then I have no objection.

The Court: Of course, this witness could refer to this memorandum to refresh his memory and tell what he found in it. Of course, it is more satisfactory to have verbatim what he took down.

Mr. Gay: That is what I think.

Mr. Schaldach: That is what I want to do.

The Court: Why don't you proceed to offer it in evidence and read it, then? There is no need having the witness read it.

(Testimony of Robert C. Taylor.)

Mr. Schaldach: Well, maybe I can't understand his writing, your honor. I will offer it in evidence.

(The document referred to was marked Respondents' Exhibit B.)

Mr. Schaldach: If counsel has no objection, I will have the witness read it, because it is in his handwriting.

Mr. Gay: It seems to me the sensible thing to do is to offer it in evidence——

The Court: It is offered and received. I would like the witness to read it. The witness can interpret his own writing much easier.

Mr. Schaldach: Read the entries opposite each date.

A. "April 25, 1948"—— [119]

Mr. Gay: May I look over your shoulder?

Mr. Schaldach: Surely.

A. "0900, Boatswain, bandaged hand with Ichthymol ointment.

"2000, hot Epsom Salts on compress.

"April 26, 0830, Bos'n. Clavel, dressed infected hand.

"2000, dressed hand. I.O. drawing salve."

It is my impression that meant Ichthymol Ointment there, but they had it abbreviated "IO."

"April 27, Bos'n, drained and dressed hand, 2 Pheno."

Mr. Gardner explained to me that was two phenobarbital tablets.

"April 28, 8:30, drain and dress hand," and a

(Testimony of Robert C. Taylor.)

similar entry with no date said, "drain and dress hand and hot Epsom Salts. Pheno at night."

"April 29, drain and dress hand.

"April 30, 0800 and 2000, drain and dressed hand.

"April 1, 0800"—I beg your pardon—"May 1, 0800 and 2000, drained and dressed hand.

"May 2, 0800 and 2000, drained and dressed hand.

"April 3"—

Mr. Schaldach: May, the 3rd.

The Court: May 3rd.

A. "May 3rd, 0800 and 2000, drained and dressed hand.

"May 4th to May 7th, Bos'n. to hospital.

"May 8th, 0800 and 2000, dressed hand. [120]

"May 9th, 8:30, dressed hand.

"May 10th, 8:30 to 2100, dressed hand.

"May 11th, 8:00 and 2000, dressed hand.

"May 12th, 8:00 and 2000, and to 5/20 daily, dressed hand."

Mr. Schaldach: That is all.

The Court: Cross-examination.

Mr. Gay: No cross-examination.

The Court: That will be all.

Mr. Schaldach: Mr. Gardner, will you retake the stand a moment, please?

CHARLES FRANKLIN GARDNER, JR.

recalled for the Respondents; previously sworn.

Mr. Schaldach: Your Honor, I omitted to bring the log books here. I would like to have them introduced through Mr. Gardner as being one of the officers——

The Court: I suppose there is no foundation for this going in evidence——

Mr. Gay: I just want to get the dates, your Honor.

Direct Examination

By Mr. Schaldach:

Q. Mr. Gardner, you have in your hand the deck log books of the “Picos” for the first voyage, have you, that you were the Second Officer on that particular ship? A. Yes, sir.

Q. And the log books that you hold in your hand, what are [121] they called? A. Rough logs.

Q. Rough or smooth?

A. These are the rough logs.

Q. These are the rough logs. And will you tell me, Mr. Gardner, on this voyage when the vessel arrived at Japan on the second leg or the home leg of the voyage——

Mr. Gay: That is already covered by the Captain’s testimony. It is in there anyhow.

A. 14:36 on the third day of May we took arrival at Yokosuka.

Q. (By Mr. Schaldach): What is that hour?

A. 2:36 p.m.

(Testimony of Charles Franklin Gardner, Jr.)

Q. 2:36 p.m.? A. 14:36.

Q. Is that 6:00 o'clock at night?

A. No, 2:36.

Q. Oh, 2:36 p.m. I see. A. 2:36.

Q. When did the vessel leave Yokosuka on the return to the States?

A. 17:00 on the seventh day of May.

Q. That would be 5:00 o'clock in the evening?

A. 5:00 o'clock in the evening.

Q. They took departure on Yokosuka?

A. Yokosuka. [122]

Mr. Schaldach: I would like to have this introduced, your Honor.

The Court: Received.

Mr. Schaldach: This particular log book here. I would like to have both received.

(The documents referred to were marked Respondents' Exhibits C and D.)

Mr. Schaldach: I have here Respondents' Exhibit D, and I will ask you what the notations here—that is, the hours of 0800 and 2000?

A. 0800 is 8:00 a.m.

Q. That is 8:00 o'clock in the morning?

A. 8:00 o'clock in the morning.

Q. And 2000 is——

A. 8:00 o'clock at night.

Q. 8:00 o'clock at night. I see. That is all, Mr. Gardner.

Mr. Gay: That is all.

The Court: That is all.

Mr. Schaldach: Captain Greenleaf, will you take the stand, please?

JOHN GREENLEAF

called for the Respondents; sworn.

Direct Examination

By Mr. Schaldach:

Q. What is your business, profession, or [123] occupation?

A. Master Mariner and Marine Surveyor.

Q. For how long have you been a Master Mariner, held the license as Master Mariner?

A. I have held a license for about eight years as Master Mariner.

Q. Before that how long did you hold any other license?

A. Well, I got my original Third Mate's license in 1926, I think it was.

Q. And during the course of 1926 to date, I assume you have sailed as Third Mate, Second Mate, First Mate, and Master Mariner? A. Yes.

Q. What sort of ships have you sailed on?

A. Well, I have sailed them all the way from the old steam schooners to the "Leviathan."

Q. I mean, did you sail aboard tankers, Victory ships, C-2's, C-3's? I have them in mind.

A. Yes.

Q. You have sailed aboard all types of vessels?

A. All types of vessels, yes.

(Testimony of John Greenleaf.)

Q. Will you state whether or not you have commanded Army Transports?

A. No, I have never commanded Army Transports, no. I have commanded commercial vessels. I have been Chief Officer on [124] Army Transports.

Q. Captain Greenleaf, in your experience as Master of a vessel—let me ask you this: Approximately how many vessels during the period of, say, the last eight years, have you been a Master Mariner or have you been Captain of or in command of?

A. Well, during the war we were shifted around quite often. I suppose I have—well, I commanded about seven Liberties and two C-2's, I think.

Q. And during the period of eight years you have commanded other than Liberties and C-2's?

A. Well, I have had better than five years actual command of various types of vessels. I have acted as pilot on tankers—as far as that goes, I hold pilot licenses for here, Los Angeles, and Honolulu.

Q. Now, Captain, the Master aboard a vessel, what are his duties regarding the operation of the vessel?

A. Well, he is in command of the vessel.

Q. And the various heads of departments, the deck department and the engine department, steward's department, are they all under the command of the Captain and subject to his control?

A. Absolutely, yes.

Q. Now, with respect, Captain, to injuries suffered by seamen aboard ships, in whose discretion lies the responsibility for determining whether or

(Testimony of John Greenleaf.)

not the condition is or is not a serious one? [125]

Mr. Gay: I will object to that, if your Honor please. The question is directed to one of law. The law covers the subject. There is no question where the responsibility lies.

The Court: Nō, I don't think so, I think it embraces a factual matter who decides whether it is a serious matter or not. Overruled.

A. The Master of the ship has the ultimate responsibility, but he delegates certain authority to those of his officers he considers the most qualified in the case of a medical officer on some vessels that do not carry a regular doctor.

The Court: Of course, we are interested in this particular ship on this voyage.

Mr. Schaldach: Yes, but I just want generally the Captain to state the practice aboard the vessels that do not carry doctors.

A. Those that do not carry doctors, but a Purser and Pharmacist Mate, the Pharmacist Mate is——

The Court: Well, the "Picos" on this voyage——

A. Well, the Master can delegate the responsibility to a licensed deck officer.

The Court: Did you delegate that to someone?

Mr. Schaldach: He was not master aboard the vessel, your Honor. Captain Greenleaf I am calling for the purpose of eliciting expert testimony on this matter.

The Court: Go ahead. [126]

(Testimony of John Greenleaf.)

Mr. Gay: Captain Johnson's testimony is here by way of deposition, he being at sea now.

Mr. Schaldach: Will you state whether or not, Captain Greenleaf, it is necessary—strike that. Will you state whether or not a man, before he obtains a license or before he becomes a licensed officer has to have certain qualifications with respect to medical care or treatment?

A. He has to show a first aid certificate or evidence that he has taken a prescribed course in first aid before he is allowed to sit for the body of his license examination.

Q. Do you know what that particular examination concerning medical care and treatment consists of, what they have to know?

A. In a general way it consists of the diagnosis of serious diseases and their treatment within the scope of the supplies available aboard ship, treatment of fractures, venereal diseases, and the general health and sanitation of the ship.

Q. And each licensed officer has to have some knowledge concerning the matters that you have testified to here?

A. Yes, they do.

Q. Now, Captain, in your opinion where there is a serious injury—strike that. Captain, in your opinion where an injury to a seaman takes place aboard shipboard at sea, the severity of that injury is called to the Captain's attention by whom?

A. By the medical officer. [127]

Q. And will you state whether or not the Captain's discretion as to what he shall do or what

(Testimony of John Greenleaf.)

course he should take, is that governed by what the medical officer tells him?

Mr. Gay: Now, just a second.

A. In——

Mr. Gay: Just a second. I will object to that, if your Honor please, on the ground that the discretion that the Master has is stated by law.

The Court: Sustained. This witness has testified that the ultimate decision is his.

Q. (By Mr. Schaldach): Captain, assuming that you were Master of the vessel, a tanker, and that one of the members of the crew came up to you with a cut in his finger which had become infected and he was being treated by the Medical Officer aboard that vessel, and the cut or whatever he received there, injury to his finger, became infected and the infection was such that it became necessary to incise it and drain it, and the draining persisted, and hot water treatment with Epsom Salts were given, would you consider such a condition a serious one whereby you would order the vessel three or four hundred miles off its course to a port which would take two or three days, or would you continue on to the port of destination, which would take about five or six days?

Mr. Gay: Well, now, I will object to that as clearly improper. [128]

The Court: Sustained. I will say this to you. Mr. Schaldach, that possibly the general custom and practice might be admissible as bearing upon the question of what an ordinarily prudent person would do under those circumstances.

(Testimony of John Greenleaf.)

Mr. Schaldach: Well, I don't want to become too specific in my question.

The Court: Well, you are very specific. You are asking this man what he would do.

Mr. Schaldach: Well, as Captain of the vessel.

Q. Captain Greenleaf, as the Master of the vessel, what is the custom—in your experience as a Master of a vessel, is it the custom of a Master, or what is the custom at sea—what discretion the Master has to determine the severity of the injury—strike that. In your experience as the Master of a vessel, Captain, during the period of time that you have told us here, is it the practice and custom with respect to injuries which become infected and which are localized, is it the custom to radio or to go to the nearest port, or to continue on the voyage when there is no apparent danger of the loss of an arm or leg through gangrene or other deep seated infection?

Mr. Gay: Well, I will object to that, if your Honor please, because it assumes—it practically answers itself. He says if it is not serious——

The Court: Well, it simmers itself down to this: The [129] discretion is in the captain. I assume if he thought it was not serious he would not turn back or deviate from his course, but go on to the port which was his destination.

Q. Well, let me ask you this: What is usually done if there is a serious injury, one where life is in danger?

(Testimony of John Greenleaf.)

A. Well, it is our duty to do all we can to protect the life and welfare of our crew. If we have a case that comes up—an injury aboard ship that we are not certain just exactly how to handle it, we take advantage of this particular radio medical service and radio our description of the case in to the nearest medical center and they give us instructions on how to treat it, and if we find that we haven't the means or the material with which to treat the injury, then we try to contact some other ship that is carrying a doctor and transfer the patient to a place where he can be treated, and in the absence of any other well equipped vessel in the vicinity, if we are within a reasonable distance of any port that there is a medical facilities, we, of course, put in to that port.

Q. (By Mr. Schaldach): Captain, in your experience as a Master aboard a vessel, have you seen or has it been called to your attention—strike that. In your opinion as a Master aboard vessels, infections through cuts, will you state whether those are common, or whether they are rare aboard vessels?

A. Well, they are fairly common. When a gang of men are working on the deck of a ship and doing heavy lifting and where [130] they are constantly getting cuts and bruises, some of them get slightly infected, but if they are reported immediately to the Medical Officer and prompt action can be taken, we rarely have trouble with them.

Q. And with respect to the treatment there and whether the vessel should turn in to port or continue

(Testimony of John Greenleaf.)

on, I think you have stated before that is in the discretion of the Captain?

A. Absolutely, yes.

Q. Now, Captain, have you had the—is it your experience that certain injuries do occur which are of a slight nature, and you find out that ultimately they may become serious after a long period of time has elapsed?

Mr. Gay: I object to that on several grounds. It is immaterial, it is very——

The Court: Yes, and I think you are taking this witness into a field in which he is not qualified.

Mr. Schaldach: All right, your Honor. You may cross-examine.

Cross-Examination

By Mr. Gay:

Q. What is your present business connection?

A. R. E. Dobie and Company, ship engineering and marine surveyors.

Q. What company is that?

A. R. E. Dobie and Company, ship engineering and marine [131] surveyors.

Q. How long has it been since you went to sea?

A. Well, I recently was out of Japan for the Army, but I got a broken leg and came back here again, and since I have been in San Francisco I joined Captain Dobie, and have been for the last fifteen months or so.

Q. Have you had any connection with Pacific Tankers?

(Testimony of John Greenleaf.)

A. No, I have not—you mean have I sailed their ships?

Q. Yes.

A. No, I have not. I am not a tanker man primarily, although I have sailed on tankers.

Q. Now, you have stated, Captain, it is possible to radio in for advice, and that is frequently done, isn't it?

A. Yes, when the case seems to demand it, yes.

Q. And there also are quite frequently instances where a ship will radio into port that they have a sick man or an injured man on board, and sometimes they will send out an airplane to pick him up, too; is that right?

A. That has been done. It is rather rare.

Q. And you are acquainted with the waters in the South China sea between Singapore and Japan?

A. Yes, quite well.

Q. And in 1948, in the spring of 1948 there would be considerable traffic along this line, would there not? You see this line? (Indicating on black-board.) [132]

A. Yes.

Q. That is the usual course, isn't it?

A. To Japan, yes, from the Singapore Straits.

Q. And there would be vessels passing, going one way and another along that—along that approximate course right along there?

A. That is a reasonably busy route so far as tankers are concerned.

Q. Do you know of instances, too, where a Master

(Testimony of John Greenleaf.)

has put his ship into port, or even turned around and gone back into port to obtain hospitalization for his injured man, don't you?

A. When it is a case of life or death, yes.

Q. Well, if it was a case of serious permanent injury, you would do that, too, wouldn't you?

A. Yes.

Mr. Gay: That is all.

Redirect Examination

By Mr. Schaldach:

Q. Captain, do you know what the condition of Manila Bay was in the spring of 1948 with respect to the wreckage of vessels, submerged vessels, in that harbor?

A. Yes, the place was full of wrecks. It still is. Quite a number of them have not even been removed right now.

Q. Captain, with respect to a vessel being operated from the poop deck—where is that, incidentally, the poop deck?

A. Well, that is the extreme stern of the vessel.

Q. Is that the usual or ordinary place that the vessel [133] is operated from?

A. No. There is an emergency steering station back there. It usually is operated from the bridge.

Q. Captain, would you consider it in your opinion a risk to the vessel to operate it from the poop deck going into a harbor such as Manila, and the conditions existing there in the spring of 1948?

(Testimony of John Greenleaf.)

A. I certainly would, steering from back aft, yes, indeed.

Q. Why, Captain?

A. Because your view is obstructed, you can't see ahead and have to transmit orders by telephone from the bridge, and it is very difficult to give the man at the wheel, where his view is obstructed, an idea where a certain wreck is, or even the ordinary surface traffic would present a very grave danger, and in the case of an oil tanker—I assume you mean this particular vessel here—hitting one of these submerged wrecks with a loaded tanker, you have a very definite fire hazard and would endanger the whole ship and the whole crew.

Mr. Schaldach: That is all.

Recross-Examination

By Mr. Gay:

Q. Well, Captain, you know that ships are, and have been for the last several years, going into Manila Harbor?

A. The harbor is open, yes, under normal operating conditions.

Q. Now, all right, since we are talking about putting an [134] injured man ashore, the vessel would not have to go right up to the dock to put him ashore, would it? They could radio in or signal in and have someone come out and pick him up, couldn't they?

A. Well, the wrecks are not all confined to the

(Testimony of John Greenleaf.)

area around the docks, Mr. Gay. They are all over the bay.

Q. I mean even if they didn't want to go inside the bay, they could come close to port and radio in, couldn't they?

A. For whom to come out after him? I don't quite understand.

Q. The United States Army is still there, isn't it?

A. Yes.

Q. And the Navy is still there, isn't it?

A. There isn't much Navy down there now, and the Army has been greatly reduced.

Q. Well, in a large port, and Manila is a large port, isn't it?

A. Well, it is not anything now to what it was before the war.

Q. Well, I am not comparing it to before the war, but it is a substantial port with lots of shipping, they have shipping facilities there?

A. Yes, they have shipping facilities there.

Q. And if a vessel didn't want to go right into that harbor it could stay outside the harbor and still have somebody come out and pick the man up, couldn't they? [135]

A. Yes, they could, but there might be quite a considerable delay under existing conditions out there.

Q. What do you mean by considerable delay?

A. Well, Manila is not a very efficiently organized port right now. Since the Philippine independence there is a skeleton organization there, but they

(Testimony of John Greenleaf.)

have no equipment for sea rescues. Unless there happened to be some suitable craft available, I wouldn't want to gamble on it.

Q. Manila is on the southeast—southwest coast of Luzon, is it not? A. Yes, southwest.

Q. And is there also a port on Mindenoa?

A. I don't know the condition of Mindenoa now. There is some small settlements around there. There is no commercial ports worthy of the name out there. I think they are pretty well blown up.

Mr. Gay: Oh, that is all.

Mr. Schaldach: No further questions.

The Court: That is all.

Mr. Schaldach: Those are all the factual witnesses, your Honor.

The Court: Any rebuttal?

Mr. Gay: No, other than, of course, I haven't even completed my case in chief, unless it may be stipulated that as far as my case in chief I am entitled to read such portions [136] of the depositions——

The Court: I think the understanding was that they are already deemed read in evidence, and all you need to do is call to my attention whatever you want me to consider in connection with those depositions.

Mr. Gay: That is all I have, your Honor, unless I may think of a question or two to ask Mr. Clavel in the morning.

The Court: Well, I intended to devote tomorrow to another case.

Mr. Gay: Well, aren't we going to have an opportunity to argue this orally?

The Court: I was going to suggest you submit it on memoranda.

Mr. Gay: Oh, anything your Honor directs, but I would have voluminous—not voluminous, but there is considerable testimony that I want to read to the court right here in argument, if I may.

The Court: Well, if I do that I am going to disrupt somebody else that wants to try a case here tomorrow, and, of course, counsel are expected to cooperate with the court, and when we can dispose of a case in one day and not take two days, we should do so.

Mr. Schalbach: I am willing to submit it.

The Court: I suggest you submit it on memoranda, and you can have ample time to submit it, and it is for the purpose [137] of permitting you to go not only into the depositions, but also the legal problems Mr. Schaldach has called to the Court's attention.

Mr. Gay: Well, I have some legal questions. All I can say is, state frankly, your Honor, I would not feel entirely satisfied with that method. Now, if the matter could perhaps go over until tomorrow afternoon or when your Honor——

The Court: Well, we cannot do that. If I put it over to tomorrow, I will have to crowd somebody else out from being in court with their case. I am just asking you if you can cooperate with the court. The Court has a very congested calendar.

Mr. Schaldach: I am willing to submit the matter on your Honor reading the depositions.

The Court: I will read the depositions, and each one of them. I will read them this evening, and if after your memoranda are in the Court feels that it is necessary or desirable that there be oral argument, I will certainly take that up with counsel.

Mr. Schaldach: What time may we have to file memoranda?

The Court: Well, fifteen, fifteen, and ten, if you wish.

Mr. Schaldach: Whatever your Honor wishes.

The Court: Very well, it will be submitted fifteen, fifteen, and ten. [138]

Certificate of Reporter

I, Clarence F. Wight, Official Reporter, certify that the foregoing 138 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting, to the best of my ability.

/s/ CLARENCE F. WIGHT.

[Endorsed]: Filed October 10, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK OF RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court, in the above-entitled Action, and that they constitute the Record on Appeal herein, as designated by the Appellant, to wit:

Libel by Seaman for Damages for Injuries.

Answer to Libel.

Answer of United States of America.

Minute Order of April 24, 1950—Entering Decree in Favor of Libelant.

Findings of Fact and Conclusions of Law.

Final Decree.

Proposed Counter Findings of Fact and Conclusions of Law.

Stipulation for Amendment of Decree and Order.

Petition for Appeal and Allowance Thereof.

Notice of Appeal.

Apostles on Appeal and Praecept Therefor.

Order Extending Time to Docket.

Deposition of John A. Johnson Taken on November 10, 1949—Libelant's Exhibit No. 1a.

Deposition of John A. Johnson—Libelant's Exhibit No. 1b and Map.

Deposition of George William Littlewood, Jr.,
February 1st, 1950—Libelant's Exhibit No. 1c.

Deposition of Louis P. R. Coward—Libelant's
Exhibit No. 1d.

Respondent's Exhibits Nos. A, B, C and D.

And I Further Certify that annexed hereto is the
original Citation on Appeal.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court at
San Francisco, California, this 6th day of October,
A.D. 1950.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12706. United States Court of
Appeals for the Ninth Circuit. Joshua Hendy Cor-
poration, a corporation, sued herein as Pacific
Tankers, Inc., a corporation, Appellant, vs. Otto
George Clavel, Appellee. Transcript of Record.
Appeal from the United States District Court for
the Northern District of California, Southern Divi-
sion.

Filed October 6, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States District Court, Northern District of California, Southern Division, in Admiralty

No. 25319-G

OTTO GEORGE CLAVEL,

Libelant and Appellee,

vs.

PACIFIC TANKERS, INC., a Corporation;
UNITED STATES OF AMERICA, and
BLACK COMPANY,

Respondents and Appellant.

ASSIGNMENT OF ERRORS

Respondents and Appellant herein hereby assigns as errors in the proceedings, orders, decision and judgment in the District Court of the above-entitled action as follows:

I.

The District Court erred in entering a decree in favor of libelant and appellee and against respondent and appellant on his cause of libel.

II.

The District Court erred in entering a decree denying respondent and appellant a decree against libelant and appellee.

III.

The District Court erred in making and entering conclusions of law and order for decree made and entered in the above-entitled cause.

IV.

The decree herein in favor of libelant and appellee and against respondent and appellant is against the law.

V.

The District Court erred in failing to adopt the proposed findings of fact and conclusions of law offered by respondent and appellant, which are in accordance with the evidence and the law applicable to the case.

VI.

The District Court erred in not rendering a decree in favor of respondent and appellant and against libelant and appellee.

Dated: October 19, 1950.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

Proctors for Respondent
and Appellant.

[Endorsed]: Filed October 19, 1950.

CERTIFICATE OF CLERK TO SUPPLEMENT
TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing Assignment of Errors, is the original filed in this Court, and that it constitutes a Supplement to the Record on Appeal herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 21st day of October, A.D. 1950.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

In the United States Court of Appeals
For the Ninth Circuit

OTTO GEORGE CLAVEL,

Appellee,

vs.

PACIFIC TANKERS, INC., a Corporation,

Appellant.

ADOPTION OF STATEMENT OF POINTS
AND DESIGNATIONS OF RECORD

To Paul P. O'Brien, Clerk of the United States
Court of Appeals for the Ninth Circuit:

Appellant herein adopts the assignment of errors heretofore filed as the statement of points to be relied upon by appellant in the above cause, pursuant to Rule 19 of the Rules of the United States Court of Appeals for the Ninth Circuit.

Appellant further designates and requests that the record on appeal in the above-entitled cause shall include the entire records set forth and particularly designated in appellant's Apostles on Appeal and Praeceptum Therefor heretofore filed.

Dated: Nov. 16, 1950.

/s/ JOHN H. BLACK,

/s/ EDW. R. KAY,

/s/ MURRAY W. SCHALDACH,

Proctors for Appellant.

[Endorsed]: Filed November 16, 1950.

